

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA,
5 Plaintiff,

6 05 CR 060

7 versus United States Courthouse
8 225 Cadman Plaza East
9 Brooklyn, N.Y. 11201
10 VINCENT BASCIANO,

11 DEFENDANT.

12 -----x
13 March 18, 2011
14 9:30 a.m.

15 TRANSCRIPT OF JURY SELECTION
16 Before: HON. NICHOLAS G. GARAUFIS,
17 DISTRICT COURT JUDGE

18 APPEARANCES

19 LORETTA LYNCH
20 United States Attorney - Eastern District of New York
21 One Pierrepont Plaza
22 Brooklyn, New York 11201

23 TARYN MERKL, ESQ.

24 NICOLE ARGENTIERI, ESQ.

25 STEPHEN FRANK, ESQ.

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GEORGE GOLTZER, ESQ.

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Proceedings recorded by mechanical stenography, transcription
by CAT.

ALLAN R. SHERMAN, CSR, RPR Official Court Reporter
United States District Court Eastern District of New York

1 THE CLERK: Criminal cause on trial, United States
2 of America versus Basciano.

3 Appearances.

4 MS. MERKL: For the government, Taryn Merkl and Jack
5 Dennehy.

6 MR. GOLTZER: For the defendant, Richard Jasper,
7 George Goltzer, Ying Stafford and Beth Bochnak for Mr.
8 Basciano.

9 THE COURT: And Mr. Basciano is present.

10 Please be seated, everybody.

11 This is regarding juror 268. The defendant moves to
12 strike juror 268 for cause on the ground that her
13 self-purported hearing difficulties could substantially impair
14 her ability as a juror.

15 The Court does not believe that this juror's
16 condition will in any way impair her ability to serve as a
17 juror in this case.

18 Juror 268 represented that she has difficulty with
19 her hearing in her left ear. She told the Court that it quote
20 "It's kind of like I have severe hearing loss at certain
21 levels. It's not so much that I don't hear, it's that
22 sometimes I don't hear properly and I don't know that I'm
23 missing things, "end quote however juror 268 represented that
24 she did not miss anything during her long and complex
25 discussion with the Court.

1 Juror 268 said that she quote, "Would be more
2 concerned in terms of maybe like jury deliberation," end
3 quote.

4 Juror 268 provided the Court with her prescriptions
5 for three drugs. The Court is not aware of any reasons why
6 these drugs would impair the jury's ability to serve.

7 Furthermore, the Court notes that the juror will
8 have completed taking one of these drugs, the steroid, by the
9 time this trial starts.

10 Although juror 268 also provided the Court with an
11 audiologist's report, she did not provide any documentation
12 which included a doctor's opinion as to whether or not she
13 could serve.

14 The Court notes that juror 268 never showed any
15 signs that she had difficulty hearing the Court during an
16 in-depth voir dire. The voir dire lasted over 30 minutes and
17 during this time I was speaking at varying volume levels and
18 was seated at approximately the same distance from the juror
19 as witnesses and attorneys will be at trial.

20 Juror 268 was able to provide thoughtful answers to
21 all of my questions which demonstrated that she fully
22 comprehended everything that I said.

23 From this questioning the Court is satisfied that
24 juror 268 will be able to serve effectively as a juror at
25 trial and in deliberations.

1 The Court further notes that if this juror
2 experiences difficulty hearing at any time during the trial,
3 the Court is prepared to take steps to accommodate her.

4 Furthermore, all transcripts and instructions will
5 be made available to jurors in the deliberation room which
6 will insure that all jurors can review testimony and clarify
7 information as needed.

8 Finally, because the jury room is small and
9 discussions will be in close quarters, the Court sees no
10 reason why jury deliberations will present any special problem
11 for this juror. The defense motion to exclude this juror is
12 denied.

13 I also will inquire of this juror should she be
14 selected as either a juror or an alternate that she advise the
15 Court if at any time she has a problem hearing any of the
16 proceedings.

17 (Prospective jurors enter the courtroom.)

18 THE COURT: Please be seated.

19 Good morning, ladies and gentlemen.

20 Before we begin with individual questioning of each
21 of you based on your responses in the questionnaire, let me
22 just remind you of the following.

23 As I instructed you before, it is extremely
24 important that you follow my instruction that you not discuss
25 this case with anyone, not your family, friends or business

1 associates and not other jurors. Please refrain from
2 discussing any aspects of this case while you are waiting in
3 the jury room today or at any point throughout this trial.

4 In addition, you must not read, listen to, watch or
5 access on the internet any accounts of this case nor research
6 or seek outside information about any aspect of the case or
7 the parties to the case.

8 Please do not communicate with anyone about the case
9 on your cell phone, through E-mail, Blackberry, I-Phone, text
10 messages or on Twitter, through any blog or website, through
11 any internet chat room or by any other social networking
12 websites, including Facebook, Linked-In and YouTube.

13 The parties and the Court deeply appreciate your
14 adherence to these instructions in a strict sense and that you
15 continue to follow these instructions until the case is over.

16 So, is juror number 288 here?

17 A PROSPECTIVE JUROR: Yes.

18 THE COURT: Juror number 288 will remain and take
19 the first seat in the first row where the microphone is. All
20 other jurors may now retire to the jury room until they are
21 called in.

22 Thank you very much for your attention.

23 All rise.

24 (Prospective jurors leave the courtroom except for
25 juror 288).

Juror 288

1 THE COURT: Please be seated.

2 You're juror number 288?

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: And I remind you that you are still
5 under oath.

6 Between the time filled out this questionnaire and
7 today, have you read, heard or learned anything about this
8 case?

9 A PROSPECTIVE JUROR: No.

10 THE COURT: You indicated that you are a collection
11 specialist, is that right?

12 A PROSPECTIVE JUROR: Yes.

13 THE COURT: And you've been working for the same
14 company for 23 years?

15 A PROSPECTIVE JUROR: 24.

16 THE COURT: It's 24.

17 Okay.

18 You put 23 down here. So now it's 24. And you are
19 employed full-time?

20 A PROSPECTIVE JUROR: Yes.

21 THE COURT: Your husband is retired?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: And you indicated that in answer to this
24 question: Do you have an unusual financial hardship, other
25 serious problem that would prevent you from serving as a juror

Juror 288

1 in this case.

2 You checked off yes, and you said my salary is most
3 of what me and my husband live on. Not sure how long my job
4 pays full salary for jury duty.

5 Did you find out between then and now?

6 A PROSPECTIVE JUROR: Yes, I believe they pay full
7 as long as the case lasts. I don't know. I didn't go into
8 months or whatever but normal jury duty they pay.

9 THE COURT: Do you work for -- don't tell me who you
10 work for -- but do you work for a large company or a small
11 company?

12 A PROSPECTIVE JUROR: Large.

13 THE COURT: Now, you indicated that you sat on two
14 juries, trial juries. One is a criminal trial. You indicated
15 that the jury reached a verdict.

16 Is that correct?

17 A PROSPECTIVE JUROR: Yes, it was a long time ago.

18 THE COURT: Did you deliberate with the jury on the
19 verdict? Were you one of the 12 jurors?

20 A PROSPECTIVE JUROR: Yes.

21 THE COURT: Also you stated that in 2004 you were a
22 juror in a civil case involving a car accident, is that right?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: And that jury also deliberated to a
25 verdict?

Juror 288

1 A PROSPECTIVE JUROR: I think they came to a
2 settlement or something.

3 THE COURT: I see.

4 So you didn't reach a verdict because they had
5 settled?

6 A PROSPECTIVE JUROR: Yes, I believe that was it.

7 THE COURT: Is there anything about your prior jury
8 service that would impact your ability to be a fair and
9 impartial juror in this case?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: You indicated that your husband was a
12 drug user and was convicted of robbery and you said drug
13 arrest?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: And that he was sent to a correction
16 facility in 1969 and that you visited him at the detention
17 facility on Atlantic Avenue and Woodburne Correctional
18 Facility in 1969 and 1970?

19 A PROSPECTIVE JUROR: Correct.

20 THE COURT: Would your husband's experience with the
21 criminal justice system have any effect on your ability to be
22 fair and impartial in this case?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: Do you believe your husband was treated
25 fairly by the criminal justice system?

Juror 288

1 A PROSPECTIVE JUROR: Yes and no.

2 THE COURT: Tell me the no part?

3 A PROSPECTIVE JUROR: He was involved in the riots
4 and he was hit over the head and they were locked up and for
5 about a month or two couldn't have any visitors. They were
6 treated kind of bad.

7 THE COURT: What riots were these?

8 A PROSPECTIVE JUROR: On Atlantic Avenue.

9 THE COURT: There were riots on Atlantic Avenue?

10 A PROSPECTIVE JUROR: Yes.

11 THE COURT: In 1969?

12 A PROSPECTIVE JUROR: Yes, I believe it was '69.
13 It's far back but yes, there was a riot.

14 THE COURT: Were these riots in connection with the
15 Vietnam War?

16 A PROSPECTIVE JUROR: No, these were just -- I don't
17 know what it is but he got cracked over the head. Then they
18 were locked up and we couldn't see him until I don't remember,
19 a month, two months.

20 THE COURT: Were you married to him at the time?

21 A PROSPECTIVE JUROR: Yes, we were married.

22 THE COURT: So --

23 A PROSPECTIVE JUROR: So that was kind of a bad
24 experience.

25 THE COURT: With the police or with the -- with the

Juror 288

1 prosecutors?

2 A PROSPECTIVE JUROR: The way he was treated.

3 THE COURT: Or with the --

4 A PROSPECTIVE JUROR: I mean the stories he told
5 about when they were locked up.

6 THE COURT: Okay.

7 Do you think that that would have any effect on your
8 ability to fairly and impartially consider the testimony of
9 law enforcement witnesses?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: You answered this question as follows:

12 Do you have any religious, philosophical, moral or
13 other belief that might make you unable to render a guilty
14 verdict?

15 You checked off yes and you explain: I do not feel
16 I can give a decision that might give someone the death
17 penalty.

18 Is that right?

19 A PROSPECTIVE JUROR: I don't know if I can do that.

20 THE COURT: Well, let me proceed to discuss with you
21 your views on the death penalty and get into it a little
22 further.

23 You said regarding your views on the death penalty:
24 I don't know if I can give the verdict of death penalty except
25 if the person committed a very violent, hideous, intentional

Juror 288

1 murder or mass murder.

2 You seem to be troubled.

3 Tell me why?

4 A PROSPECTIVE JUROR: I don't know, I don't know if
5 I can -- I don't know if I can give that verdict. I'm not
6 sure. I never had to and I just -- it does, it makes me
7 nervous.

8 THE COURT: It makes you nervous. Why do you think
9 you are nervous about this?

10 A PROSPECTIVE JUROR: I don't know. This whole
11 thing is giving me anxiety.

12 THE COURT: How does the anxiety present itself? In
13 other words, what -- you have anxiety, what is the result of
14 the anxiety?

15 Is there anything special that the anxiety results
16 in?

17 A PROSPECTIVE JUROR: Yeah, I mean, I don't know, at
18 night sometimes I can't think sleeping thinking about if I'm
19 going to be on this. I would have to hear the trial maybe. I
20 don't know if I can just say death penalty.

21 THE COURT: Can we have a sidebar.

22 MS. MERKL: Yes, your Honor.

23 (Whereupon, the following took place at the
24 sidebar.)

25 THE COURT: At this stage I would go into a whole

Juror 288

1 discussion about the trial, the two phases of the trial and so
2 forth but I'm wondering what your views are about this juror's
3 statements and demeanor and whether she would be an
4 appropriate juror for this case.

5 MS. MERKL: We would move to strike this juror for
6 cause. She is visibly nervous, keeps closing her eyes which
7 is causing the government a lot of concern.

8 She has very a closed body language and the fact
9 that she is already having sleepless nights or anxiety over a
10 case where she hasn't begun the jury selection, the government
11 doesn't see how she can serve.

12 MR. JASPER: I agree. Just watching her right now,
13 she seems to be in a lot of turmoil.

14 MR. GOLTZER: I think the riots and her husband
15 being in jail, and he got locked down, affects her ability.
16 That is my understanding.

17 THE COURT: I was out of town that week.

18 Thank you.

19 (End of discussion at sidebar.)

20 THE COURT: We don't have any more questions for
21 you.

22 Mr. Reccoppa will tell you what to do next.

23 You have a nice day.

24 (Whereupon, a prospective juror exits the
25 courtroom.)

Juror 288

1 THE COURT: There is a motion to strike the juror
2 for cause?

3 MS. MERKL: Yes, your Honor, the government and the
4 defense I believe consent that this juror should be struck for
5 cause. She is extremely anxious about sitting on a case of
6 this type as demonstrated by her courtroom demeanor and her
7 reluctance to answer the court's questions.

8 THE COURT: And the defense consents?

9 MR. JASPER: Yes, your Honor.

10 THE COURT: Juror 288 is struck for cause on
11 consent.

12 We're going to go to 289. Then we'll go back to
13 255.

14 289 isn't here.

15 292 then is next.

16 The next one will be 292.

17 MS. MERKL: Your Honor, I would just note with
18 regard to this juror that she indicated in question 58 that
19 she has a problem with the charges and wrote in that she is
20 scared and doesn't think she can handle hearing the details of
21 this trial.

22 In addition, with regard to her views vis-a-vis the
23 death penalty, she stated that she is anti-death penalty
24 because of her religion and moral fiber.

25 So we want to draw the Court's attention to those

Juror 292

1 things because it may expedite and we have a lot of jurors
2 remaining.

3 (Whereupon, a prospective juror entered the
4 courtroom.)

5 THE COURT: You are juror 292?

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: And let me ask you between the time you
8 filled out the questionnaire and this morning, have you heard,
9 read, learned or been told anything about in case?

10 A PROSPECTIVE JUROR: Yes, I have.

11 THE COURT: Tell me what it is?

12 A PROSPECTIVE JUROR: I just red something in the
13 paper.

14 THE COURT: What did you read?

15 A PROSPECTIVE JUROR: I can't remember, something
16 about, something about a tie.

17 THE COURT: About a tie?

18 A PROSPECTIVE JUROR: Yes.

19 THE COURT: Is that it?

20 A PROSPECTIVE JUROR: Yes, nothing, just a small
21 blush.

22 THE COURT: Do you know what paper it was?

23 A PROSPECTIVE JUROR: Daily News.

24 THE COURT: From now on, as I told you, please don't
25 read anything. If anyone says I think you are on this case,

Juror 292

1 tell them the judge told you you are not to discuss it, you
2 are not to be told anything.

3 Be polite but firm.

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: Thank you.

6 Now, you indicated that you've been with the same
7 employer for 29 years, is that right?

8 A PROSPECTIVE JUROR: Yes.

9 THE COURT: Is there without telling me who it is,
10 is this a government agency or is this a private employer?

11 A PROSPECTIVE JUROR: It's a not for profit.

12 THE COURT: And you do finance?

13 A PROSPECTIVE JUROR: I pay the payroll.

14 THE COURT: You do the payroll.

15 Very well.

16 You answered this question: The defendant is
17 charged with conspiring to murder in aid of racketeering,
18 murder in aid of racketeering and possessing a firearm in
19 connection with the murder and murder conspiracy. Is there
20 anything about the nature of these charges in and of
21 themselves that would interfere with your ability to fairly
22 decide this case impartially in accordance with the
23 instructions of the Court?

24 You checked off yes and you said: All the above
25 scared the wits out of me. I don't think I could handle

Juror 292

1 hearing the details of this trial.

2 Is that your feeling?

3 A PROSPECTIVE JUROR: Yes, I'm very stressed out
4 about this.

5 THE COURT: How does the stress manifest itself in
6 you?

7 A PROSPECTIVE JUROR: Internally. I can't sleep.
8 Ever since I heard about this case, I've been like really
9 stressed out and just the thought of being on this case
10 affects my stomach and my sleep pattern.

11 THE COURT: Do you think that this stress would
12 interfere with your ability to listen to and evaluate the
13 evidence as to the guilt or innocence of the defendant?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: I'll just ask you a couple of other
16 questions.

17 In describing your views on the death penalty, you
18 said I do not believe in the death penalty. My religious
19 beliefs, believe that God is the only one who can decide who
20 lives or dies.

21 Is that your view?

22 A PROSPECTIVE JUROR: Yes, it is.

23 THE COURT: Are there any exceptions to that true?

24 A PROSPECTIVE JUROR: Not really. I mean, it's just
25 -- I just can't see myself being the person to say who could

Juror 292

1 live or die and it's not in my beliefs that a human being
2 should do that. That is something God decides.

3 THE COURT: Are there other questions?

4 MS. MERKL: No, your Honor.

5 MR. JASPER: No.

6 THE COURT: I want to thank you for coming in.

7 You have a nice day.

8 Mr. Reccoppa will tell you what to do next.

9 (Whereupon, a prospective juror exits the
10 courtroom.)

11 THE COURT: Is there a motion?

12 MS. MERKL: Yes, your Honor, the government moves to
13 excuse this juror for cause, both due to her inability to
14 evaluate the evidence in the case due to her anxiety and with
15 regard to her substantial impairment with regard to the death
16 penalty.

17 MR. GOLTZER: No objection.

18 THE COURT: The juror is struck, number 292, on the
19 consent of the parties. She is substantially impaired.

20 Juror number 255.

21 Tell me when you are ready because we are taking
22 that one out of turn.

23 Are we all set?

24 MR. GOLTZER: Yes, judge.

25 THE COURT:

Juror 255

1 (Whereupon, a prospective juror entered the
2 courtroom.)

3 THE COURT: Please be seated. You are juror
4 number 255?

5 A PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: You remind you that you are still under
7 oath.

8 And let me ask you since you filled out the
9 questionnaire, have you read or learned or been told anything
10 about this case?

11 A PROSPECTIVE JUROR: No, sir.

12 THE COURT: You indicated that you've been employed
13 with the same employer for the last 21 years, is that right?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: What kind of work do you do? Don't tell
16 he me who you work for just what kind of work?

17 A PROSPECTIVE JUROR: Outdoors.

18 THE COURT: Do you work for a private employer or a
19 public employer?

20 A PROSPECTIVE JUROR: A public.

21 THE COURT: You indicated that you had prior
22 experience as a member of a trial jury in a criminal case back
23 in 2005 or 2006?

24 A PROSPECTIVE JUROR: Yes.

25 THE COURT: And the case involved an assault. Let

Juror 255

1 me just ask you this, without telling me what the verdict was,
2 did the jury reach a verdict?

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: Were you one of the jurors who
5 deliberated to a verdict?

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: You answered the following question: Do
8 you believe there are such entities as organized crime
9 families, La Cosa Nostra the mob or the Mafia?

10 A PROSPECTIVE JUROR: Yes.

11 THE COURT: You do?

12 A PROSPECTIVE JUROR: Yes.

13 THE COURT: You put down no here. Was that a
14 mistake?

15 A PROSPECTIVE JUROR: Maybe it was. Yes, it was
16 because I heard different stories in the past.

17 THE COURT: When you say you heard different
18 stories?

19 A PROSPECTIVE JUROR: I mean if it's true or not.

20 THE COURT: Is that from like watching --

21 A PROSPECTIVE JUROR: My opinion, no, I don't
22 believe.

23 THE COURT: You don't believe there is a Mafia?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: But you heard stories that there is a

Juror 255

1 Mafia?

2 A PROSPECTIVE JUROR: Yes, through the movies.

3 THE COURT: But you don't think those are accurate?

4 A PROSPECTIVE JUROR: No, it's fiction.

5 THE COURT: Now, I have a few questions for you on
6 your views on the death penalty.

7 You were asked to explain your views. You said: If
8 the defendant is found to be guilty of the death penalty, then
9 it should stand since it is the law. I have no opinion on the
10 death penalty at all.

11 What is your view about the imposition of the death
12 penalty for an intentional and deliberate murder?

13 A PROSPECTIVE JUROR: It depends on the crime, what
14 kind of a crime it was.

15 THE COURT: Well, in this case the defendant is
16 accused of the intentional and deliberate murder of an
17 individual. He is accused of conspiracy to commit the murder
18 and a weapons charge in connection with the other two charges.
19 And the way the case will go forward is that the first phase
20 of the case is like any other criminal case. The government
21 has the burden of proving that the defendant is guilty of the
22 crimes beyond a reasonable doubt. They will present evidence
23 to the jury that they believe will prove that the defendant is
24 guilty. The defendant never has any responsibility of any
25 kind to prove that he is innocent because in our system of

Juror 255

1 justice, the defendant is deemed to be innocent of all the
2 charges until and until the government proves him guilty
3 beyond a reasonable doubt.

4 So the defendant has no obligation to testify or to
5 present any evidence and the burden is always on the
6 government.

7 Do you understand that?

8 A PROSPECTIVE JUROR: Yes.

9 THE COURT: And I will instruct the jury that the
10 jury can't hold it against the defendant in any way that the
11 defendant did not participate in the trial.

12 Do you understand that?

13 A PROSPECTIVE JUROR: Yes.

14 THE COURT: So if the jury returns a verdict of
15 intentional and deliberate murder of an individual, at that
16 point the jury will come back and there will be a second part
17 of the trial. The second part of the trial will be what is
18 called the penalty phase.

19 At that point the defendant has already been found
20 guilty of intentional and deliberate murder and in the penalty
21 phase the jury will have to decide what the penalty should be.
22 The normal penalty for that crime is life in prison without
23 the possibility of release. But in this case the government
24 is asking the jury, as it's entitled to, is asking the jury to
25 impose a more severe penalty which is the death penalty.

Juror 255

1 Do you understand that?

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: The government's burden is to provide
4 evidence to the jury that proves beyond a reasonable doubt
5 that the death penalty is the only appropriate sentence. And
6 what the government must do is provide what is called
7 aggravating factors, information about the background,
8 activities, record of the defendant that it believes will
9 prove to all 12 jurors beyond a reasonable doubt that the
10 defendant should receive the death penalty.

11 The defense has the right if it wishes to present
12 what is called mitigating factors, evidence of the defendant's
13 background and circumstances that it will argue justify the
14 sentence of life without the possibility of release and will
15 counterbalance any evidence the government puts forward of
16 aggravating factors.

17 So there is going to be a weighing process in the
18 second stage of the trial.

19 Do you understand that?

20 A PROSPECTIVE JUROR: Yes, I do.

21 THE COURT: Now, do you believe that you could
22 fairly and impartially consider the evidence in the penalty
23 phase, the aggravating factors and the mitigating factors and
24 decide for yourself what the penalty should be?

25 A PROSPECTIVE JUROR: Yes, I do.

Juror 255

1 THE COURT: Is there any kind of deliberate and
2 intentional murder for which a defendant should always receive
3 the death penalty?

4 A PROSPECTIVE JUROR: No.

5 THE COURT: Well, if you learned that the defendant
6 had already been convicted of a separate intentional murder,
7 would you be able to consider the mitigating evidence and
8 impose a sentence of life without the possibility of release?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: If you learned that the defendant had
11 planned at some point to murder a law enforcement officer but
12 the plan had never gone forward and the government presented
13 the information about the plan, would you always impose the
14 death penalty for this crime in that situation?

15 A PROSPECTIVE JUROR: I suppose so, yes.

16 THE COURT: Would you consider mitigating factors
17 that might counterbalance the information about the plan to
18 kill the law enforcement officer?

19 A PROSPECTIVE JUROR: Yes.

20 THE COURT: Is it possible that the mitigating
21 factors would be sufficient that you would impose a penalty of
22 life without the possibility of release?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: If you were informed at the penalty
25 phase that the defendant was already serving a life sentence

Juror 255

1 without the possibility of release for another murder, would
2 you always impose the death penalty for this intentional
3 murder?

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: Why?

6 A PROSPECTIVE JUROR: Well, it depends what the
7 person did, what type of crime really.

8 THE COURT: It's an intentional murder. Would you
9 want to know the circumstances of the intentional murder or
10 does it matter?

11 A PROSPECTIVE JUROR: The evidence really, all the
12 evidence combined.

13 THE COURT: Let me ask you if you learned -- is
14 there --

15 MR. JASPER: No further questions.

16 THE COURT: No further questions?

17 MS. MERKL: No, your Honor.

18 THE COURT: Have a nice day.

19 Mr. Reccoppa will tell you what to do next.

20 (Whereupon, a prospective juror exits the
21 courtroom.)

22 THE COURT: Is there a motion?

23 MR. JASPER: Yes, your Honor, we move to strike for
24 cause this particular juror.

25 MS. MERKL: The government consents.

Juror 255

1707

1 THE COURT: Juror number 255 is struck on consent of
2 the parties because he is substantially impaired.

3 MR. JASPER: Correct, your Honor.

4 296 is next.

5 (Whereupon, a prospective juror entered the
6 courtroom.)

7 THE COURT: Please be seated.

8 You are juror number 296?

A PROSPECTIVE JUROR: Yes.

10 THE COURT: And I remind you that you are still
11 under oath.

12 Let me ask you since you filled out the
13 questionnaire have you learned or read or been advised of
14 anything about the case?

15 A PROSPECTIVE JUROR: I read a Daily News article.

16 THE COURT: What was that about?

18 THE COURT: The tie.

19 Is there anything -- do you recall anything in the
20 article other than the discussion of the tie?

21 A PROSPECTIVE JUROR: Not really.

22 THE COURT: Now, you say that you worked for the
23 last nine and a half years basically for -- I can't read it

24 What kind of work do you do? Don't tell me who you
25 work for.

Juror 296

1 A PROSPECTIVE JUROR: I work in civil rights.

2 THE COURT: Is this a not-for-profit organization?

3 A PROSPECTIVE JUROR: Yes, it is.

4 THE COURT: Are you a lawyer?

5 A PROSPECTIVE JUROR: No, I'm not.

6 THE COURT: Before that, what did you do?

7 A PROSPECTIVE JUROR: I worked at a foundation.

8 THE COURT: At a foundation?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: How long did you do that?

11 A PROSPECTIVE JUROR: A little over two years.

12 THE COURT: What did you do for the foundation?

13 A PROSPECTIVE JUROR: I worked in public affairs.

14 THE COURT: You indicated that in answer to this
15 question: Have you taken any courses or worked in the field
16 of drug abuse counseling, law, criminal justice, criminology
17 or other related areas, you said yes, and you explained:
18 Courses in constitutional law, work in public interest. I
19 have knowledge of law and criminal justice.

20 Is that correct?

21 A PROSPECTIVE JUROR: It is correct.

22 THE COURT: Now, in this case the Court is going to
23 instruct the jury as to what the law is and will tell the jury
24 that the only law that the jury is permitted to consider and
25 apply it is law as the jury gets it from the Court.

Juror 296

1 Would you be able to set aside any knowledge or
2 perception of the law that you have that might be in conflict
3 with the instructions of the Court and only follow the
4 instructions of the Court?

5 A PROSPECTIVE JUROR: I would do the best of my
6 ability.

7 THE COURT: Do you think there might be a situation
8 where you might have views on what the law is where you just
9 disagree with the Court and think the Court is wrong?

10 A PROSPECTIVE JUROR: There may be a possibility.

11 THE COURT: Any questions?

12 MS. MERKL: No, your Honor.

13 MR. JASPER: No, judge.

14 THE COURT: I'd like to thank you for coming in.

15 Mr. Reccoppa will tell you what to do next.

16 (Whereupon, the prospective juror exits the
17 courtroom.)

18 THE COURT: Is there a motion?

19 MS. MERKL: Yes, your Honor.

20 The government will move to excuse this juror for
21 cause given her work in the public interest field involving
22 areas of criminal justice and law. She indicated that she
23 would not necessarily be able to put aside her views of the
24 law and there is a possibility that her own view of what the
25 laws are would influence the jury's decision.

Juror 296

1 She indicated various biases in her written
2 questionnaire including a bias or prejudice against the
3 defendant, question 122. Based on the totality of the record
4 as to this juror, we believe she should be excused for cause.

5 MR. JASPER: No objection.

6 THE COURT: Juror 296 is struck. She is
7 substantially impaired.

8 And that is on consent.

9 298.

10 (Whereupon, a prospective juror entered the
11 courtroom.)

12 THE COURT: Please be seated, sir.

13 You are juror number 298, is that correct?

14 A PROSPECTIVE JUROR: Correct.

15 THE COURT: I remind you that you are still under
16 oath.

17 Let me ask you as a preliminary matter, since you
18 filed out the questionnaire, have you seen, heard or been told
19 anything about this case?

20 A PROSPECTIVE JUROR: No. I mean I've seen things
21 on the internet.

22 THE COURT: What have you seen on the internet?

23 A PROSPECTIVE JUROR: Just that it was jury
24 selection.

25 THE COURT: How did you -- what were the

Juror 298

1 circumstances of learning this on the internet?

2 A PROSPECTIVE JUROR: I don't recall how I got to
3 that to be honest with you but I did see something about it.

4 THE COURT: Are there certain general websites that
5 you review on any kind of regular basis, when you turn on the
6 computer?

7 A PROSPECTIVE JUROR: Yes, MSN, Yahoo, et cetera.

8 THE COURT: So how did you come across this is my
9 question?

10 A PROSPECTIVE JUROR: I honestly don't recall. It
11 was about a month or so ago. It was right after the initial.

12 THE COURT: Did you do a search?

13 A PROSPECTIVE JUROR: No.

14 THE COURT: It just happened to be on the website?

15 A PROSPECTIVE JUROR: That's correct.

16 THE COURT: Okay.

17 And if you can recall, what did the posting or
18 article say about this case?

19 A PROSPECTIVE JUROR: Just that it was jury
20 selection for a trial.

21 THE COURT: Did it discuss anything about the
22 defendant?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: What did it discuss?

25 A PROSPECTIVE JUROR: The fact that it was his

Juror 298

1 second trial.

2 THE COURT: Second trial?

3 A PROSPECTIVE JUROR: Well, subsequent trial.

4 THE COURT: From what?

5 A PROSPECTIVE JUROR: I'm sorry?

6 THE COURT: Subsequent trial?

7 A PROSPECTIVE JUROR: For this individual.

8 THE COURT: You mean that he has been tried before?

9 A PROSPECTIVE JUROR: Correct.

10 THE COURT: Did it say what the result of the last
11 trial were?

12 A PROSPECTIVE JUROR: Yes, it did.

13 THE COURT: What did it say?

14 A PROSPECTIVE JUROR: Conviction.

15 THE COURT: Sidebar.

16 (Whereupon, the following took place at the
17 sidebar.)

18 THE COURT: My concern is that I had to drag it out
19 of him and I think that he is substantially impaired because
20 he was keeping from the Court what he knew.

21 I would think that he may know even more and I'm not
22 sure about the truthfulness of his statements that he didn't
23 research it.

24 Does everyone agree he should be struck?

25 MR. JASPER: Yes, your Honor.

Juror 298

1 MS. MERKL: Yes, your Honor.

2 (End of discussion at sidebar.)

3 THE COURT: Thanks very much for coming in.

4 Mr. Reccoppa will tell you what to do next.

5 (Whereupon, a prospective juror exits the
6 courtroom.)

7 THE COURT: Is there a motion?

8 MR. JASPER: Yes, your Honor, we move to strike this
9 particular juror for failure to follow the Court's
10 instructions and also substantial impairment.

11 THE COURT: Very well.

12 Is that consented to?

13 MS. MERKL: Yes, due to the news exposure, yes,
14 your Honor.

15 THE COURT: Juror number 298 is struck for cause as
16 being substantially impaired.

17 MR. JASPER: Judge, can I take a quick five minutes?

18 THE COURT: I feel we're getting going. We'll take
19 five minutes.

20 (Recess.)

21 THE COURT: Juror number 300.

22 MR. JASPER: Thank you, judge.

23 MS. MERKL: Yes, judge.

24 (Whereupon, a prospective juror entered the
25 courtroom.)

Juror 300

1 THE COURT: Please be seated, ma'am.

2 You are juror number 300?

3 A PROSPECTIVE JUROR: Yes, I am.

4 THE COURT: I remind you that you are still under
5 oath?

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: Let me ask you since you filled out the
8 questionnaire, have you learned anything, read anything, been
9 told anything about the case?

10 A PROSPECTIVE JUROR: Yes.

11 THE COURT: What is that?

12 A PROSPECTIVE JUROR: In the Daily News, I don't
13 know, two weeks ago, three weeks ago there was an article
14 about paper clips and the defendant.

15 THE COURT: What did you learn if anything about the
16 defendant other than about the paper clips.

17 A PROSPECTIVE JUROR: They had like a nickname or
18 something. Then I remembered going back I don't know when,
19 something about being in prison and demanding certain things.

20 THE COURT: You are remembered from something you
21 had read before you were even called for jury duty, is that
22 right?

23 A PROSPECTIVE JUROR: Yes, but it didn't come to
24 mind until I read the article about the paper clips and there
25 was in parenthesis a nickname. I can't even remember. Then I

Juror 300

1 remember reading something prior to that, I don't remember
2 when but I was able to associate it.

3 THE COURT: Shall we go forward?

4 MR. JASPER: Yes, your Honor.

5 THE COURT: Let's go forward.

6 I have a few extra questions for you based on your
7 questionnaire.

8 You are retired, correct?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: What kind of work did you do? Don't
11 tell me who you worked for. When you were employed, what kind
12 of work did you do?

13 A PROSPECTIVE JUROR: My last job before retirement?

14 THE COURT: Yes.

15 A PROSPECTIVE JUROR: School lunch helper.

16 THE COURT: How long did you do that?

17 A PROSPECTIVE JUROR: About 12 years.

18 THE COURT: Before you did that, what kind of work
19 did you do?

20 A PROSPECTIVE JUROR: Secretarial.

21 THE COURT: You indicated that some friend or family
22 member is or was with the New York City Police Department?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: Was this a friend or a relative?

25 A PROSPECTIVE JUROR: A lot of relatives.

17 Juror 300

1 THE COURT: You have a lot of relatives?

2 A PROSPECTIVE JUROR: I'm Irish American, a lot of
3 relatives.

4 THE COURT: Happy St. Patrick's day?

5 A PROSPECTIVE JUROR: I have a nephew, two uncles, I
6 think two first cousins.

7 THE COURT: There are going to be a number of law
8 enforcement officers who testify in this case. Will you be
9 able to be fair and impartial in considering their testimony
10 in the same way you would consider the testimony of any juror
11 -- any witness, rather? I misspoke.

12 A PROSPECTIVE JUROR: You're asking me would I
13 believe the police officers over any witnesses?

14 THE COURT: Would you tend to believe them more or
15 be less critical of them than you would in considering other
16 witnesses?

17 A PROSPECTIVE JUROR: I probably would be less
18 critical.

19 THE COURT: Why is that?

20 A PROSPECTIVE JUROR: Because I would associate them
21 with the family or something like that, with my family.

22 THE COURT: Let me ask you some questions about your
23 views on the death penalty.

24 You were asked to describe your views on the death
25 penalty. You say it's the law, we voted for it. I didn't but

Juror 300

1 it is the law.

2 A PROSPECTIVE JUROR: Right.

3 THE COURT: You didn't vote for the death penalty?

4 A PROSPECTIVE JUROR: No, no.

5 THE COURT: Well, I think that there was a New York
6 State death penalty and that law was enacted by the
7 legislature. It wasn't a referendum on the ballot the way we
8 have some referendums on the ballot but that was struck down
9 by the highest Court in New York.

10 So New York State doesn't have a death penalty but
11 the federal government has a death penalty that was voted by
12 Congress in Washington. So it's unlikely that you ever
13 technically voted for the death penalty although you may have
14 voted for a member of the state legislature who supports the
15 death penalty.

16 Do you understand that?

17 A PROSPECTIVE JUROR: Yes.

18 THE COURT: Now, if someone is found guilty of
19 intentional and deliberate murder, do you think that it's
20 possible that you would impose the death penalty on such a
21 person?

22 A PROSPECTIVE JUROR: The answer I want to give is I
23 don't think the answer you want -- you know.

24 THE COURT: I have no --

25 A PROSPECTIVE JUROR: What I would say is I'd have

Juror 300

1 to look at the victim.

2 Okay?

3 The victim like being a mother, grandmother, the
4 victim is a child or abuse or something like that or I could
5 put myself and say yeah, you did it to my family, hang them,
6 whatever. I'm not keen on the death penalty.

7 THE COURT: Is there any kind of deliberate murder
8 where you think the death penalty may be more justified than
9 in other cases?

10 A PROSPECTIVE JUROR: Yes.

11 THE COURT: What kind?

12 A PROSPECTIVE JUROR: Rape of a small child.

13 THE COURT: You mean that resulted in death?

14 A PROSPECTIVE JUROR: In death. The beating of a
15 three year old, things like that definitely. But again, I
16 still would have a hard time taking another individual's life.
17 It's as simple as that.

18 THE COURT: In this case there will be -- first,
19 there will be what you would normally expect in a criminal
20 trial. There will be a trial on the question of whether the
21 defendant committed certain crimes.

22 One crime that he is excused of is intentional and
23 deliberate murder of an individual who was an adult.

24 The second is conspiracy to commit the murder.

25 And the third is a weapons charge associated with

Juror 300

1 the other two charges.

2 And so the government will present evidence that it
3 believes will prove beyond a reasonable doubt that the
4 defendant committed these crimes.

5 The defense never has to submit any evidence to the
6 jury as to the guilt or innocence of the defendant because
7 under our system of law, a defendant is presumed to be
8 innocent until proven guilty.

9 So the defendant doesn't have to testify, the
10 defendant doesn't have to submit any evidence. The burden is
11 always on the government to prove guilt.

12 You understand that?

13 A PROSPECTIVE JUROR: Yes.

14 THE COURT: So let's assume that the defendant is
15 tried for these crimes, the jury hears the evidence, I
16 instruct the jury on the law and the jury goes back to the
17 deliberation room and after deliberating decides that the
18 defendant is guilty of intentional and deliberate murder.

19 So now the defendant is guilty of that crime.
20 Ordinarily the penalty for that crime in the federal system is
21 life without the possibility of release.

22 A PROSPECTIVE JUROR: Parole?

23 THE COURT: No parole possible. But in this case
24 the government is seeking, as it is entitled to, a more severe
25 penalty which is the death penalty.

Juror 300

1 So what will happen next is that there will be a
2 trial as to the penalty and the government will submit to the
3 jury evidence which is called aggravating factors, information
4 on the defendant's background, circumstances, record and so
5 forth that it believes will prove to the jury beyond a
6 reasonable doubt that the defendant should receive the more
7 severe penalty of death.

8 And the defense may submit what is called mitigating
9 factors, evidence that the defense will argue shows where the
10 jury should then conclude that the sentence of life in prison
11 without the possibility of release is the appropriate penalty
12 and that therefore the jury should impose that penalty.

13 And after all that evidence is presented, then the
14 jury will go back and decide what to do. All 12 jurors would
15 have to vote in favor of the death penalty in order to impose
16 the death penalty. If even one juror decides that a life
17 sentence is the correct sentence, then the sentence will be
18 life. No juror is ever required to vote for the death
19 penalty.

20 The question of what the penalty should be is a
21 personal moral decision for each juror. I will never instruct
22 the jury that the jury has to impose that penalty.

23 Do you understand?

24 A PROSPECTIVE JUROR: Yes, I do.

25 THE COURT: Now, you told us that there are certain

Juror 300

1 types of intentional murder for which you would be more likely
2 to impose the death penalty.

3 Is there any kind of murder, intentional and
4 deliberate murder for which you would always vote for the
5 death penalty?

6 A PROSPECTIVE JUROR: You know, that is a very hard
7 question because when you read something and hear something,
8 the first thought that comes to your mind is, you know, but
9 when you think about it and you realize what you said, I would
10 find it extremely, extremely difficult to say I'm all for the
11 death penalty in any case. I really have to think about it.

12 This isn't, you know --

13 THE COURT: All right, let me give you a few
14 hypotheticals that might help.

15 If the government presents evidence at the
16 sentencing or penalty phase that the defendant had already
17 been convicted of a separate intentional murder, would you be
18 able to consider imposing the death penalty in that case?

19 A PROSPECTIVE JUROR: No, because always in the back
20 of my mind is life in prison without parole and to me, that is
21 horrendous. That is horrendous to me.

22 THE COURT: Do you understand that the law is that
23 life in prison without the possibility of release or parole is
24 the lesser penalty and the death penalty is the greater
25 penalty, do you accept that?

Juror 300

1 A PROSPECTIVE JUROR: Yes.

2 THE COURT: If you learned that the defendant was
3 already serving a sentence of life in prison without the
4 possibility of parole or release for another intentional
5 murder --

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: Would you --

8 A PROSPECTIVE JUROR: No, they are in there.

9 Look, they are in there, the person, the persons,
10 whoever, they are in there for life.

11 THE COURT: And you think that is sufficient?

12 A PROSPECTIVE JUROR: Yes, I do because knowing that
13 there is no future, there is no tomorrow, there is no nothing,
14 it's just this, day after day after day.

15 THE COURT: You think that is pretty severe?

16 A PROSPECTIVE JUROR: Yes.

17 THE COURT: In the case -- is there any kind of case
18 of multiple murders where you would be inclined to impose the
19 death penalty where the defendant had killed a number of
20 people?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: Over time?

23 A PROSPECTIVE JUROR: Over time?

24 THE COURT: Yes.

25 A PROSPECTIVE JUROR: You are talking serial?

Juror 300

1 THE COURT: If it's a serial killer, would that be
2 an appropriate case for the death penalty?

3 A PROSPECTIVE JUROR: Yeah.

4 THE COURT: So you would consider it?

5 A PROSPECTIVE JUROR: I would definitely consider it
6 then.

7 THE COURT: You think you could vote for it in the
8 case of a serial killer?

9 A PROSPECTIVE JUROR: I'm thinking about the cop in
10 Canada. That is terrible but you want me to be honest with
11 you.

12 THE COURT: The cop in Canada?

13 A PROSPECTIVE JUROR: The serial killer in Canada
14 and to him, I would say yes, he should get the death penalty.
15 I read that in the paper.

16 THE COURT: I haven't read it.

17 A PROSPECTIVE JUROR: It's going back.

18 Okay?

19 THE COURT: If you learned that the defendant had
20 been involved in a number of separate intentional murders over
21 time, not a serial killing situation but as part of the
22 background of the defendant there were a number of murders for
23 which there is evidence that he committed, even if he wasn't
24 convicted of all of them, would you possibly vote for the
25 death penalty in that case?

Juror 300

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Are there other questions?

3 MR. JASPER: No, your Honor.

4 MS. MERKL: No, your Honor.

5 THE COURT: All right, I want to thank you for
6 coming in.

7 Mr. Reccoppa will tell you what to do next.

8 Have a nice day.

9 A PROSPECTIVE JUROR: Thank you.

10 THE COURT: You are welcome.

11 (Whereupon, a prospective juror exits the
12 courtroom.)

13 THE COURT: Is there a motion?

14 MS. MERKL: Yes, your Honor the government moves to
15 strike this juror for cause due to substantial impairment
16 based on her views of the death penalty.

17 MR. JASPER: No objection.

18 THE COURT: Very well.

19 Juror number 300 is stricken for cause. She is
20 substantially impaired.

21 She is not death qualified.

22 And in addition, I note that the juror indicated her
23 inability to treat law enforcement testimony in the same way
24 as other witness testimony because she has numerous relatives
25 who have been police officers.

Juror 302

1 302.

2 289 has come in and we'll take 289 next after 302.

3 I'm just keeping 289 and 306 separated because I
4 haven't given the instruction to 289.

5 (Whereupon, a prospective juror entered the
6 courtroom.)

7 THE COURT: Please be seated.

8 Good afternoon.

9 A PROSPECTIVE JUROR: Good afternoon.

10 THE COURT: You are juror number 302?

11 A PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: I remind you that you are still under
13 oath.

14 And let me ask you the following question, between
15 the time you filled out the questionnaire and today, have you
16 read, heard, learned or been told anything about this case?

17 A PROSPECTIVE JUROR: No.

18 THE COURT: Okay.

19 You indicated that you've been -- that you are a
20 producer for the last three years, is that correct?

21 A PROSPECTIVE JUROR: Much longer than that.

22 THE COURT: With this particular employer for the
23 last three years, is that right?

24 A PROSPECTIVE JUROR: Yes.

25 THE COURT: And before that, were you also a

Juror 302

1 producer for some other organization?

2 A PROSPECTIVE JUROR: Yes, my husband and I owned a
3 company and he sold part of it and I work for this gentleman.

4 THE COURT: That took over the company?

5 A PROSPECTIVE JUROR: Yes.

6 THE COURT: When you say you are a producer, without
7 telling me exactly what you produce, what kind of production
8 are you involved in? Is it TV production, is it commercial
9 produce shop?

10 Is it documentary production?

11 A PROSPECTIVE JUROR: It's audio production.

12 THE COURT: And is that what you've done during your
13 career, audio production?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: That's what your husband does as well?

16 A PROSPECTIVE JUROR: Yes.

17 THE COURT: Is he retired?

18 A PROSPECTIVE JUROR: No, but he works less.

19 THE COURT: Fine.

20 Now, you indicated the following answer to the
21 following question: As a result of your exposure to the
22 media, is there any reason why you can not be fair and
23 impartial in this case? And you checked off yes and said:
24 Would not feel comfortable being a juror on a case trying a
25 member of a organized crime family.

Juror 302

1 Is that how you feel?

2 A PROSPECTIVE JUROR: Yes, I do, sir.

3 THE COURT: Why is that?

4 A PROSPECTIVE JUROR: Well, I have a basic
5 discomfort with it to begin with but.

6 THE COURT: It meaning?

7 A PROSPECTIVE JUROR: Organized crime. May I also
8 say something about the work that I do.

9 May I?

10 THE COURT: Yes, just as long as you don't say
11 anything that will tell us who you work for or where you work.
12 If it's about the type of work?

13 A PROSPECTIVE JUROR: Yes.

14 THE COURT: Go ahead.

15 As it might relate to this kind of a case.

16 A PROSPECTIVE JUROR: Yes.

17 THE COURT: That, I want.

18 A PROSPECTIVE JUROR: I'm an audio book producer and
19 my husband is an audio book producer and we work for all of
20 the major publishers and on two different occasions my husband
21 was the producer director of the books that Joe Pistone, alias
22 Donnie Brasco put on audio and worked with Joe Pistone.

23 THE COURT: Are there any other questions for this
24 juror?

25 MR. JASPER: No, judge.

Juror 302

1 MS. MERKL: No, judge.

2 THE COURT: Gee, I'm glad you told us. Have a nice
3 day.

4 (Whereupon, a prospective juror exits the
5 courtroom.)

6 THE COURT: Is there any -- is there a motion to
7 strike based on substantial impairment because the juror knows
8 Joe Pistone?

9 MS. MERKL: Yes, your Honor, there will be evidence
10 in this trial about Donnie Brasco so we certainly think it
11 would be inappropriate for the juror to serve.

12 THE COURT: Do you consent?

13 MR. JASPER: Yes, your Honor.

14 THE COURT: The jury is struck on consent. That is
15 juror 302.

16 And we are going back to juror 289. Bring him or
17 her in.

18 (Whereupon, a prospective juror entered the
19 courtroom.)

20 THE COURT: Please be seated, ma'am. Good
21 afternoon.

22 You are juror number 289?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: And let me just ask you this question.
25 Between the time that you filled out the questionnaire and

Juror 289

1 today, have you read or learned or been advised of anything
2 about this case?

3 A PROSPECTIVE JUROR: No.

4 THE COURT: I'm going to just reiterate an
5 instruction that we are going to all the jurors that I have
6 given previously then I'll ask you some followup questions
7 about your questionnaire.

8 A PROSPECTIVE JUROR: Okay.

9 THE COURT: As I instructed you before, it is
10 extremely important that you follow my instruction that you
11 not discuss this case with anyone, not your family, friends or
12 business associates and not other jurors.

13 Please refrain from discussing any aspect of this
14 case while you are waiting in the jury room today or at any
15 other point throughout this trial.

16 In addition, you must not read, listen to, watch or
17 access on the internet any accounts of this case or research
18 or seek outside information about any aspect of this case or
19 the parties to the case.

20 Please do not communicate with anyone about the case
21 on your cell phone, through E-mail, Blackberry, I-Phone, text
22 messaging or on Twitter through any blog or website through
23 any internet chat room or by way of any other social
24 networking websites including Facebook, Linked-In and YouTube.

25 Do you understand?

Juror 289

1 A PROSPECTIVE JUROR: Yes.

2 THE COURT: Thank you very much for your attention.

3 Now, you indicated in your questionnaire that you
4 are a teacher, is that right?

5 A PROSPECTIVE JUROR: Yes.

6 THE COURT: At what level do you teach?

7 A PROSPECTIVE JUROR: All ages from K to 12, special
8 ed.

9 THE COURT: And you have been teaching special ed
10 for the past 15 years?

11 A PROSPECTIVE JUROR: Yes.

12 THE COURT: Have you been teaching the whole time in
13 one school or various schools?

14 A PROSPECTIVE JUROR: Various schools depending on
15 the need.

16 THE COURT: And so are you a public school teacher?

17 A PROSPECTIVE JUROR: Yes.

18 THE COURT: You indicated that you have friends or
19 relatives who work for law enforcement, U.S. Immigration, is
20 that right?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: Is this someone who -- this person works
23 in Virginia and Maryland?

24 A PROSPECTIVE JUROR: Yes.

25 THE COURT: Do you talk to this person a lot?

Juror 289

1 A PROSPECTIVE JUROR: My brother.

2 THE COURT: Do you talk to this person a lot?

3 A PROSPECTIVE JUROR: Every so -- yes, about once a
4 week.

5 THE COURT: Do you discuss his work with him?

6 A PROSPECTIVE JUROR: He doesn't talk to me about
7 it.

8 THE COURT: You indicated that your father was held
9 hostage at gunpoint and tied up and robbed.

10 Was this in Kenya?

11 A PROSPECTIVE JUROR: Yes.

12 THE COURT: How long ago was this?

13 A PROSPECTIVE JUROR: 2000 -- I'm guessing, maybe
14 2001.

15 THE COURT: Does your father live there?

16 A PROSPECTIVE JUROR: No, he passed away.

17 THE COURT: Did he live there at the time?

18 A PROSPECTIVE JUROR: No, he was born there. He
19 lived here but every summer he would travel back to Kenya.

20 THE COURT: Do you know any of the details of what
21 happened or just a general knowledge?

22 A PROSPECTIVE JUROR: It's just everyone is under
23 gated communities in that part of the world and it's an every
24 day thing. It just seems to be quite the norm.

25 THE COURT: I see.

Juror 289

1 You testified concerning your cousin's death in a
2 road accident, is that right, in Manhattan, you testified in
3 Manhattan?

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: When was that?

6 A PROSPECTIVE JUROR: 2003.

7 THE COURT: And your testimony was only regarding --
8 it wasn't about the accident itself but it was about her
9 character?

10 A PROSPECTIVE JUROR: Yes.

11 THE COURT: And that was on the phone you testified?

12 A PROSPECTIVE JUROR: It was on the phone because
13 the procedure was taking place in Florida.

14 THE COURT: I see.

15 A PROSPECTIVE JUROR: And her parents were overseas.

16 THE COURT: I see.

17 Now, let me ask you some questions about your views
18 on the death penalty.

19 You indicated: I am for it if it fits the crime.
20 Certain acts are inexcusable in my opinion.

21 Is that your view?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: The death penalty can sometimes be
24 imposed for intentional and deliberate murder. And my
25 question is: Are there any kinds of or types of intentional

Juror 289

1 and deliberate murders for which you would always vote for the
2 death penalty?

3 A PROSPECTIVE JUROR: Not always.

4 THE COURT: In this case the defendant is accused of
5 three crimes, intentional and deliberate murder of an
6 individual, conspiracy to commit the murder and a weapons
7 charge in connection with the other two charges. And the
8 first phase of the trial after the jury is selected will be
9 what we normally think of as a criminal jury trial. The
10 government will present evidence that it believes will
11 convince the jury beyond a reasonable doubt that the defendant
12 is guilty of those crimes.

13 The defendant never has any obligation to present
14 any evidence or to testify because the defendant is presumed
15 innocent of all the charges unless and until the government
16 proves that he is guilty.

17 The burden to prove that he is guilty is always on
18 the government. The defendant never has to prove that he is
19 innocent.

20 Do you understand?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: So if the government presents evidence
23 that you hear in the first phase which we'll call the guilt
24 phase of the trial, and if the jury hears the evidence, I give
25 the jury the law, the jury retires to the jury room, it

Juror 289

1 deliberates, if the jury reaches a verdict of guilty of
2 intentional and deliberate murder, then and only then will
3 there be a second phase of the trial. The second phase of the
4 trial is the penalty phase. At the penalty phase there are
5 only two possible penalties.

6 The penalty that is normally imposed for intentional
7 and deliberate murder is life without the possibility of
8 release, but in this case the government is seeking, as it is
9 entitled to, a more severe penalty which is the death penalty.

10 And what will happen in the second phase which is
11 the penalty phase is the government will present evidence
12 which is called aggravating factors, information about
13 activities, background, record of the defendant that it
14 believes will convince the jury not to impose the normal
15 penalty of life without the possibility of release but to
16 impose the more severe penalty of death.

17 In order to do that, the government must prove
18 beyond a reasonable doubt that the death penalty is
19 appropriate. All 12 jurors must agree and vote for it. And
20 the defense has the right to present evidence that is called
21 mitigating factors, information about the defendant and his
22 circumstances and background which it believes will convince
23 the jury that the proper penalty is indeed life in prison
24 without the possibility of release and that the jury should
25 reject the death penalty that the government wants to impose.

Juror 289

1 So do you understand all that?

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: Now, at the penalty phase, you will,
4 should there be one, you will be -- you will hear certain
5 evidence.

6 Now, I'm going to give you some hypotheticals as to
7 the kinds of evidence that is an aggravating factor.

8 Let's say that at the penalty phase you hear
9 evidence that the defendant had already been convicted of a
10 separate intentional murder. In that case would you be able
11 to consider the mitigating evidence presented by the defense
12 and the defense arguments that a sentence of death is not
13 appropriate in this case and that a sentence of life is
14 appropriate?

15 A PROSPECTIVE JUROR: If I heard --

16 THE COURT: If you heard evidence of a separate
17 intentional murder that the defendant was convicted of.

18 A PROSPECTIVE JUROR: Would I take that into
19 account?

20 Would I --

21 THE COURT: Would you take it into account in your
22 balancing of the possibilities for a sentence?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: Would that knowledge of such a fact
25 cause you to always impose the death penalty?

Juror 289

1 A PROSPECTIVE JUROR: No.

2 THE COURT: If you learned that a defendant was
3 already serving a sentence of life in prison without the
4 possibility of release for another murder or murders, would
5 you always impose the death penalty for this crime?

6 A PROSPECTIVE JUROR: I can't say always, no.

7 THE COURT: What would you like to know about the
8 defendant in terms of mitigating factors, information that
9 might help you and convince you to impose a life sentence?

10 A PROSPECTIVE JUROR: Past actions.

11 THE COURT: His behavior in the past?

12 A PROSPECTIVE JUROR: Behavior.

13 THE COURT: What kind of behavior would you consider
14 mitigating or favorable to the defendant?

15 A PROSPECTIVE JUROR: Favorable? Given a period of
16 time what has he done in that period of time to show positive
17 actions.

18 THE COURT: Are you interested in what his behavior
19 was during the period of time before the charge was made
20 against him?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: Now, let me ask you another question.
23 If you received evidence at the penalty phase that the
24 defendant had planned the killing of a law enforcement officer
25 but that it was not -- it didn't result in any harm coming to

Juror 289

1 the law enforcement officer, in that case, would you always
2 impose the death penalty or possibly impose the death penalty
3 or not impose the death penalty?

4 A PROSPECTIVE JUROR: Possibly.

5 THE COURT: You said the following in answer to this
6 question: Are your views on the death penalty such that you
7 would be unable to consider a sentence of life without the
8 possibility of release if the evidence at trial showed a
9 defendant presented a future danger to others?

10 And you checked both yes and no you, you said no
11 sure when you said future danger question mark, like
12 communicating, ordering in quotes others to commit crimes.
13 What did you mean by that?

14 A PROSPECTIVE JUROR: Your question was would I
15 always -- that one question was would I always impose it?

16 THE COURT: Yes.

17 A PROSPECTIVE JUROR: It depends -- no, not always.
18 Not always.

19 THE COURT: There is this other question. Let me
20 just ask you to expand and your answer if possible.

21 Are your views on the death penalty such that you
22 would be unable to consider the sentence of life without the
23 possibility of release if the evidence at trial showed the
24 defendant sought the murder of a cooperating witness?

25 Then you said maybe. That's what you wrote, maybe.

Juror 289

1 And you said: Witnesses are important. It would greatly
2 bother me if the witness were in harm's way, especially an
3 innocent witness not involved in a case.

4 What do you mean by innocent witness not involved in
5 a case?

6 A PROSPECTIVE JUROR: Just hearing about witnesses
7 who wants to testify and they are in danger of being hurt.

8 THE COURT: Well, would one innocent witness include
9 witnesses who were alleged to be coconspirators and also
10 involved in the crimes being tried?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: So for those witnesses, you would still
13 consider a life sentence for the defendant even if there was
14 evidence that showed that the defendant sought the murder of
15 that witness?

16 Do you understand or do you want me to go back?

17 A PROSPECTIVE JUROR: Go back.

18 THE COURT: If the witness is believed to be or
19 testifies that he or she is a coconspirator in committing a
20 certain crime and you hear the witness' testimony at the guilt
21 stage but in the penalty phase the government presents
22 evidence that the defendant sought the murder of that
23 coconspirator at some point. Would that cause you to always
24 impose the death penalty?

25 A PROSPECTIVE JUROR: I would consider it but not

Juror 289

1 always.

2 THE COURT: Are there other questions?

3 MR. JASPER: Yes, your Honor.

4 THE COURT: All right.

5 (Whereupon, the following took place at the
6 sidebar.)

7 THE COURT: Okay. Go.

8 MR. JASPER: Judge, following up on something you
9 just ended with, there is going to be evidence that Mr.
10 Basciano purportedly sought permission from Mr. Massino to
11 kill children and parents of cooperating witnesses, in other
12 words, innocent people, which seems to be one of her major
13 concerns here.

14 So there is going to be some evidence that he sought
15 to harm innocent people who were related to witnesses. So if
16 you can ask her whether or not she could fairly and
17 impartially view the life without possibility in that
18 situation.

19 Also, your Honor, she indicated in question 107,
20 that is the cost of prison question, that our prisons are
21 pretty nice compared to third world countries, and I wondered
22 if you would ask her if that also would interfere with her
23 decision in the life or death context.

24 THE COURT: Yes.

25 MR. JASPER: Also, your Honor, since this case is

Juror 289

1 going to involve substantial evidence involving obviously
2 organized crime and she had mentioned that one of the factors
3 would be the history of a particular defendant, the history
4 here is going to be involvement I believe in organized crime
5 from a very early age.

6 Would that in and of itself also interfere with or
7 possibly taint her view of whether she would be able to give
8 life.

9 Also, question 122, she indicated that she had
10 privacy concerns that might interfere with her ability to be
11 impartial.

12 If you can explore what she meant by that.

13 MS. MERKL: She indicated it would not interfere but
14 it is a concern she raised. She wrote it in.

15 With regard to Mr. Jasper's proposed follow-ups, the
16 government would of course request that they be asked the way
17 your Honor is asking them vis-a-vis even in the light of
18 evidence about potential solicitation to kill family members
19 of cooperating witnesses, whether she could still consider
20 mitigators and aggravators and consider the imposition of a
21 life sentence. She is not required to be impartial in the
22 face of aggravators.

23 MR. JASPER: I didn't mean to suggest that. The
24 other thing is question 106 was left blank.

25 106 is the burden shifting question whether or not

Juror 289

1 the defendant starts with the principle that he is entitled
2 for life.

3 THE COURT: I'm sorry, I didn't hear what you said
4 about burden shifting.

5 MR. JASPER: It's left blank.

6 THE COURT: I'm ask her. 106, I'll ask her.

7 MR. GOLTZER: In terms of the mitigating factors, we
8 request the language.

9 THE COURT: I didn't understand that at all. Just
10 slowly.

11 MR. GOLTZER: When the government asks your Honor to
12 question whether the prospective juror could consider
13 mitigating factors, we have, of course, have no objection to
14 that question but we believe the case law is not simple
15 consideration but requires a state of mind from the
16 prospective juror that they both consider and be able to give
17 effect to mitigating evidence.

18 Anyone can listen.

19 MS. MERKL: They need to be able to weigh it. I
20 don't know what give effect means.

21 THE COURT: Vote for life I think is give effect.

22 MR. GOLTZER: I'm not suggesting a stakeout
23 question, vote for life but it has to be a meaningful
24 question, not simply hearing it.

25 THE COURT: Thank you.

Juror 289

(End of discussion at sidebar.)

THE COURT: Now you told -- you heard some information about this case in the past, is that right or have you? Nothing?

A PROSPECTIVE JUROR: No.

6 THE COURT: Now, if the government presents evidence
7 of certain aggravating factors that lead you to believe that
8 the defendant is a danger in the future and the defense
9 presents evidence that the defendant could be designated to a
10 prison facility where he would have limited contact with other
11 prisoners and with the prison guards, would you be able to
12 consider the mitigating factor about placement in that type of
13 prison and weigh that fairly against any aggravating factors
14 that you hear and then seriously consider the possibility of
15 placing the defendant in life without the possibility of
16 release?

A PROSPECTIVE JUROR: Yes.

18 THE COURT: If you heard evidence that the defendant
19 had considered or spoken of the possibility of killing the
20 children of the cooperators, could you still give serious
21 consideration to the mitigating factors that are presented by
22 the defense before reaching a decision as to whether a life
23 sentence or death sentence is appropriate?

A PROSPECTIVE JUROR: I would do my best.

25 THE COURT: Would it be hard for you to do that?

Juror 289

1 A PROSPECTIVE JUROR: Yes.

2 THE COURT: Why is that?

3 A PROSPECTIVE JUROR: Children are involved.

4 THE COURT: Now, you indicated that in answer to
5 this question: Does the cost a taxpayer pays for housing an
6 inmate for a life sentence a concern to you? You said yes, I
7 have thought of this especially since compared to persons
8 around the world, third world countries, our prisons seem
9 pretty nice with the three meals a day and TV.

10 If I instruct the jury that in considering what the
11 sentence should be, that it's not to take into account the
12 cost of either imprisoning someone or the cost of putting
13 someone to death but only the evidence of the aggravating and
14 mitigating factors, would you follow my instructions?

15 A PROSPECTIVE JUROR: Yes.

16 THE COURT: Now the question was --

17 You didn't answer this question. Let me ask it.
18 You left it blank.

19 Do you believe that a defendant should first have to
20 prove that he is does not deserve the death penalty before the
21 jury should give any consideration as to whether to impose a
22 life sentence?

23 A PROSPECTIVE JUROR: Someone just coughed. Can you
24 repeat that.

25 THE COURT: Sure.

Juror 289

1 Do you believe that a defendant should first have to
2 prove that he does not deserve the death penalty before the
3 jury should give any consideration as to whether to impose a
4 life sentence?

5 A PROSPECTIVE JUROR: Should a defendant have to
6 prove?

7 THE COURT: That he does not deserve the death
8 penalty before considering a life sentence.

9 A PROSPECTIVE JUROR: No.

10 THE COURT: By the way, I'll instruct the jury that
11 a life sentence is presumptively the appropriate sentence for
12 this crime and that in order for impose the death penalty, the
13 jury have to determine after hearing the evidence that the
14 government has proven beyond a reasonable doubt that the more
15 severe penalty of death is the appropriate sentence.

16 Do you understand that?

17 A PROSPECTIVE JUROR: Yes.

18 THE COURT: I think I mentioned it before but let me
19 just mention it again.

20 There will be evidence presented by the government
21 potentially that the defendant has a long history in the
22 activities of organized crime.

23 Would such evidence make it impossible for you to
24 give meaningful consideration to mitigating circumstances
25 before deciding what the penalty should be?

Juror 289

1 A PROSPECTIVE JUROR: No.

2 THE COURT: Then there is another question:

3 Is there anything about the nature of the charges or
4 the facts of the case as they have been explained to you thus
5 far that would affect your ability to be a fair and impartial
6 in this case?

7 You said no. Then you added: Just my privacy as a
8 juror.

9 What did you mean?

10 A PROSPECTIVE JUROR: Because you mentioned that
11 it's probably going to be in the media and that would concern
12 me.

13 THE COURT: All right.

14 And I also advised you that your personal
15 information, your name, where you live and other identifying
16 information where you work is going to be kept confidential to
17 the degree that when you filled out that last page with all
18 your information, the first thing that was done by the clerk
19 was the clerk ripped that off the questionnaire and put it in
20 a vault in the clerk's office and no one here including me has
21 any idea what your name is, what your address is and other
22 specifics that you may have put down on that page.

23 Do you understand?

24 A PROSPECTIVE JUROR: Yes.

25 THE COURT: Any questions?

Juror 289

1 A PROSPECTIVE JUROR: There are a few things that
2 you said now that people can find out a lot of information
3 about someone, right?

4 THE COURT: It's possible to find out information
5 but the way the questionnaire is constructed and the efforts
6 that are made to maintain your privacy are intended, are
7 designed to maintain your privacy. And that's what I would
8 tell you about that.

9 Any other questions?

10 MS. MERKL: No, your Honor.

11 MR. JASPER: No, your Honor.

12 THE COURT: Thank you for coming in.

13 Mr. Reccoppa will tell you what to do next.

14 (Whereupon, a prospective juror exits the
15 courtroom.)

16 THE COURT: Does anyone have a motion?

17 MS. MERKL: No, your Honor.

18 THE COURT: Do you have a motion?

19 MR. JASPER: Yes, judge, I think this jury is
20 impaired based upon her concern about privacy. She seemed to
21 be very uncomfortable. Even as your Honor explained to her,
22 her demeanor seemed to be that she was skeptical of the
23 procedures to keep her privacy private and not public and it
24 does rise to a level of concern that I have that I would seek
25 to strike on those grounds.

Juror 289

1 I was a little surprised that she was still so
2 skeptical, she smiled and she didn't really -- with respect,
3 she didn't seem to buy it and that is a concern.

4 MS. MERKL: Given the fact that the defense objected
5 to the government's anonymous jury motion, we are not sure why
6 the defense is so concerned about the juror's perception of
7 privacy.

8 That being said this juror like anybody is not
9 stupid. She understands that the media could try to find out
10 information about her, could try to find out where she taught
11 but that doesn't mean that she is unqualified to serve as a
12 juror.

13 MR. JASPER: The position we took about the
14 unanimous jury is irrelevant as we stand here today. She
15 seems to be concerned about her privacy and it seemed to be a
16 major concern.

17 And that's what I'm basing this on. She seemed to
18 be fearful it would appear.

19 MS. MERKL: Your Honor, that is quite a stretch.
20 Nothing in the questionnaire indicated that she was fearful of
21 the defendant.

22 The juror specifically stated that it would not
23 interfere with her ability to be fair and impartial in the
24 questionnaire.

25 When your Honor inquired as to the basis for her

Juror 289

1 concerns, she stated that it was the Court's observation that
2 this case would likely receive media attention that caused her
3 to have those privacy concerns.

4 The privacy concerns are entirely natural,
5 your Honor, and I think that many jurors like to have privacy
6 concerns. It's one of the reasons that the government moves
7 for an unanimous jury, although this juror has raised that
8 issue certainly does not seem as disqualifying. There is no
9 information she couldn't be fair and impartial.

10 To the contrary. Her answers were careful,
11 thoughtful, balanced. She was extremely thoughtful in the
12 questionnaire and there is absolutely no basis to conclude
13 that she could not be fair and impartial in this case from the
14 record.

15 THE COURT: I'll reserve on that one.

16 Next.

17 306 is next.

18 It's just about 1:00.

19 So my suggestion is that we ask juror 306 to come
20 back in the afternoon and we'll take 306 right after lunch.

21 Is everyone agreeable to that?

22 MR. JASPER: Yes.

23

24

25

Juror 289

1 THE COURT: I have a sentencing at 2:00 so we'll
2 start around 2:20.

3 Thank you.

4 (Whereupon, there was a luncheon recess.)

5 (Continued on next page.)

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Juror 289

1 (Whereupon, the afternoon session began at
2 2:30 p.m.)

3 MS. MERKL: Your Honor, I just wanted to note I
4 inadvertently took the elevator with a man who I think is our
5 next juror and he asked me where the courthouse cafeteria was.
6 So I told him, and I didn't realize that until after I told
7 him that he might be our next juror.

8 I realized after I took the elevator that he fits
9 the description of our next juror. I certainly didn't mean
10 any contact with him intentionally.

11 MR. GOLTZER: We don't see that as a problem because
12 if he enjoyed the food the way I did, he will hold that
13 against them.

14 Would the Court instruct the jurors that in the
15 future when the lawyers go by them without saying hello, that
16 we are not being rude.

17 THE COURT: I'll try to remember. I would point out
18 that counsel had adequate time available to themselves to
19 avail themselves of local eating establishments aside from the
20 courthouse cafeteria today.

21 MR. GOLTZER: And we enjoyed it very much. Thank
22 you.

23 (Prospective jurors enter the courtroom.)

24 THE COURT: Please be seated good afternoon, ladies
25 and gentlemen.

Juror 289

1 Before we proceed with individual questioning to
2 follow up on the answers in your questionnaires, I'd like to
3 remind you of the following that I mentioned at the time you
4 filled out your questionnaires.

5 As I instructed you previously, it's important that
6 you follow my instruction that you not discuss the case with
7 anyone, not your family, friends or business associates and
8 not other jurors.

9 Please refrain from discussing any aspect of the
10 case while you are waiting in the jury room today or at any
11 point throughout the trial.

12 In addition, you must not read, listen to, watch or
13 access on the internet any accounts of this case or research
14 or seek outside information about any aspects of the case or
15 the parties to the case.

16 Please do not communicate with anyone about the case
17 on your cell phone, through E-mail, Blackberry, I-Phone, text
18 messaging or on Twitter, through any blog or website or any
19 internet chat room or by way of any other social networking
20 websites including Facebook, Linked-In and YouTube.

21 And I would just add that if you should see any of
22 the lawyers in the hallway when you are coming in or out of
23 the courthouse, I've instructed them not to say anything to
24 you, even hello because it's important that they not
25 communicate with you in any way. They are not being rude or

Juror 289

1 impolite. They are just following my instructions.

2 So just bear that in mind as well.

3 First, 306.

4 Good. Please remain when the other jurors go into
5 the jury room.

6 Everyone else may retire to the jury deliberation
7 room until I call you.

8 Thank you.

9 (Prospective jurors exit the courtroom except for
10 juror 306.)

11 THE COURT: You are juror number 306?

12 A PROSPECTIVE JUROR: Yes.

13 THE COURT: I remind you that you are still under
14 oath.

15 And let me ask you preliminarily, from the time you
16 filled out the questionnaire until today, have you read or
17 learned or been told of anything regarding this case by anyone
18 or from anything?

19 A PROSPECTIVE JUROR: No.

20 THE COURT: Thank you.

21 I'm going to ask a few followup questions. You are
22 retired?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: Before you retired, tell me what kind of
25 work you did, not who you worked for but what kind of work?

Juror 306

1 A PROSPECTIVE JUROR: Electrical.

2 THE COURT: Were you an electrician?

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: And how long were you an electrician?

5 A PROSPECTIVE JUROR: The last 40 years.

6 THE COURT: Did you work for various jobs and
7 companies or for one employer for a long period of time?

8 A PROSPECTIVE JUROR: The last employer for a long
9 time.

10 THE COURT: And was this employer? I don't want to
11 know who it was but was this employer a company or a
12 government organization?

13 A PROSPECTIVE JUROR: Company.

14 THE COURT: Are you currently working at all?

15 A PROSPECTIVE JUROR: Yes.

16 THE COURT: What kind of work do you do?

17 A PROSPECTIVE JUROR: I have a real estate business.

18 THE COURT: You indicated that you served on a jury
19 in a drug case.

20 Is that right?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: Was that in the State Court?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: And that was back in the late 1990s, is
25 that right?

Juror 306

1 A PROSPECTIVE JUROR: Yes.

2 THE COURT: And I don't want to know what the
3 verdict was but did you deliberate to a verdict?

4 A PROSPECTIVE JUROR: No.

5 THE COURT: Did the case?

6 A PROSPECTIVE JUROR: Dismissed.

7 THE COURT: Plead out?

8 A PROSPECTIVE JUROR: Yes.

9 THE COURT: Your questionnaire indicates that you're
10 familiar with the Parkside Diner in Queens?

11 A PROSPECTIVE JUROR: Yes.

12 THE COURT: Is that really a diner or is it a
13 restaurant?

14 A PROSPECTIVE JUROR: It's a restaurant.

15 THE COURT: That's in Corona, the one in Corona?

16 A PROSPECTIVE JUROR: Yes.

17 THE COURT: How often did you go there?

18 A PROSPECTIVE JUROR: Maybe every couple of months,
19 every three months. Not very often.

20 THE COURT: You go with your family?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: You like the food?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: Do you know the owners?

25 A PROSPECTIVE JUROR: No.

Juror 306

1 THE COURT: Then the other restaurant is Piccolo
2 Venezia. How often have you gone there?

3 That is in Astoria, correct?

4 A PROSPECTIVE JUROR: That would be -- in 10 years,
5 maybe twice.

6 THE COURT: And that's because?

7 A PROSPECTIVE JUROR: I'm very familiar with the
8 area and I pass by there.

9 THE COURT: Do you know the owners?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Now, I'm going to ask you a few
12 questions about your views on the death penalty.

13 You were asked to describe your views. You said all
14 12 jurors must agree that death is the only appropriate
15 sentence.

16 Is that correct, is that your view?

17 A PROSPECTIVE JUROR: I want to hear the question.

18 THE COURT: You said all 12 jurors must agree that
19 death is the only appropriate sentence. That's what you said
20 your views were on the death penalty. Do you remember writing
21 that down?

22 A PROSPECTIVE JUROR: I'm not a hundred percent sure
23 now. I don't remember -- in other words, 12 jurors -- what is
24 the question again?

25 THE COURT: The question was: Please describe your

Juror 306

1 views on the death penalty. And you wrote: All 12 jurors
2 must agree that death is the only appropriate penalty.

3 A PROSPECTIVE JUROR: Right.

4 THE COURT: Regarding your personal views on the
5 death penalty, do you believe that -- this is a case -- let me
6 withdraw that.

7 This case involves three charges. The first charge
8 is intentional and deliberate murder of an individual. The
9 second charge is conspiracy to commit the murder. And the
10 third charge is a weapons charge in connection with the other
11 two charges.

12 The government has brought an indictment against the
13 defendant containing those charges. An indictment is not
14 evidence, it's simply an accusation. The defendant is
15 considered to be innocent until proven guilty and the
16 presumption of innocence stays with the defendant unless the
17 jury at the end of the trial votes unanimously to find the
18 defendant guilty of the charges beyond a reasonable doubt.

19 Now, the defendant doesn't have to prove anything,
20 doesn't have to testify. You can't hold it against the
21 defendant in any way that he didn't submit any evidence or
22 that he didn't testify because the burden is always on the
23 government to prove that he is guilty.

24 Do you understand that?

25 A PROSPECTIVE JUROR: Yes.

Juror 306

1 THE COURT: So in this case if after hearing the
2 evidence the jury decides that the defendant is guilty of an
3 intentional and deliberate murder, then and only then will
4 there be a second part of the trial with the same jury.

5 And in the second part which is called the second
6 phase the jury will have to decide to impose one of two
7 sentences. The normal sentence, the regular sentence is life
8 in prison without the possibility of parole or release. The
9 other sentence, the more serious sentence is the death
10 penalty.

11 And the government will have to present evidence at
12 the second phase of the trial which is called the penalty
13 phase of certain aggravating factors, evidence about the
14 defendant's background, activities, record and other
15 circumstances that it believes will prove to the jury beyond a
16 reasonable doubt that the defendant should receive the more
17 severe penalty of the death penalty.

18 Now, the defense may present evidence of mitigating
19 factors, information about the defendant's conduct and
20 background that the defense will argue justifies the
21 imposition of life without the possibility of release. And
22 then the jury will consider the factors, weigh the factors in
23 whatever way the jury decides to do. And then after
24 deliberating will decide what the sentence should be.

25 All 12 jurors will have to agree to impose the death

Juror 306

1 penalty in order to impose it as you said in your response.
2 If only one juror decides that the penalty should be life
3 without the possibility of release, then that is the penalty.
4 Every juror gets to decide for him or herself. Each juror has
5 the right to utilize his or her own moral standards but the
6 jury will have an opportunity to discuss which sentence to
7 impose before reaching a conclusion.

8 So that is how the trial will proceed.

9 If the defendant is found guilty of intentional and
10 deliberate murder in the first phase of the trial and we get
11 to a second phase, do you believe there are circumstances
12 under which you would impose the death penalty on a defendant
13 who committed a deliberate and intentional murder?

14 A PROSPECTIVE JUROR: You are asking me if I would?

15 THE COURT: Yes.

16 A PROSPECTIVE JUROR: I would say no.

17 THE COURT: No. Why not?

18 A PROSPECTIVE JUROR: Because based on my religious
19 beliefs, I believe that -- I don't go for an eye for an eye.
20 That is one explanation. The other one is my religion teach
21 me love and forgiveness so I don't know.

22 Also I'm running -- this time of the year is a very
23 lending time for my religion and it would be very difficult
24 for me to go any other way.

25 THE COURT: You mean it's Lent?

Juror 306

1 A PROSPECTIVE JUROR: Lent.

2 THE COURT: And you are Greek Orthodox?

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: And the Greek Orthodox church opposes
5 the death penalty?

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: Let me just take it one step further.

8 Is there any kind of murder, any type of intentional
9 murder for which you would consider the possibility of
10 imposing the death penalty?

11 A PROSPECTIVE JUROR: Personally, I would say no.

12 THE COURT: Are there other questions?

13 MR. JASPER: None, your Honor.

14 MS. MERKL: No, your Honor, thank you.

15 THE COURT: Thank you very much.

16 Mr. Recoppa will tell you what to do next.

17 A PROSPECTIVE JUROR: Thank you.

18 THE COURT: Have a good Easter.

19 (Whereupon, a prospective juror exits the
20 courtroom.)

21 THE COURT: Just for the clarification as to the
22 juror's comment about his church, the Greek Orthodox church
23 like the Catholic church opposes the death penalty at any
24 time.

25 So he gave an accurate description of his church's

Juror 306

1 moral philosophy.

2 MS. MERKL: Thank you, your Honor.

3 MR. JASPER: Thank you, judge.

4 THE COURT: Is there a motion?

5 MS. MERKL: Yes, your Honor, the government would
6 move to strike this juror for cause as he is not death
7 qualified.

8 MR. JASPER: No objection.

9 THE COURT: All right, motion granted.

10 Juror number 306 is struck for cause. He is
11 substantially impaired as he is not death qualified.

12 308.

13 (Whereupon, a prospective juror entered the
14 courtroom.)

15 THE COURT: Please be seated, sir. Good afternoon.

16 A PROSPECTIVE JUROR: Good afternoon.

17 THE COURT: You are juror number 308?

18 A PROSPECTIVE JUROR: Yes.

19 THE COURT: I remind you that you are still under
20 oath.

21 Let me ask you a question. Since filled out the
22 questionnaire until today, have you read or heard or learned
23 anything about this case?

24 A PROSPECTIVE JUROR: No, your Honor.

25 THE COURT: Very fine.

Juror 308

1 You indicated that you are retired, is that right?

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: And before you retired how long did you
4 work?

5 A PROSPECTIVE JUROR: 20 something years.

6 THE COURT: Without telling me who you worked for,
7 what kind of work did you do?

8 A PROSPECTIVE JUROR: It varies from security to
9 accounting to working in a hospital.

10 THE COURT: And so you worked with different
11 employers?

12 A PROSPECTIVE JUROR: Yes.

13 THE COURT: Would you say that you worked, spent
14 more time working for public sector employers or private
15 sector employers?

16 A PROSPECTIVE JUROR: Private.

17 THE COURT: You indicated that you served in the
18 military police, is that right?

19 A PROSPECTIVE JUROR: Yes.

20 THE COURT: And you were in the New York Army
21 National Guard?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: And that is a part-time activity. Did
24 you have active duty as a military police person?

25 A PROSPECTIVE JUROR: No.

Juror 308

1 THE COURT: But you went to two weeks summer camp
2 every year?

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: Where did you go?

5 A PROSPECTIVE JUROR: Peekskill.

6 THE COURT: Portsmouth?

7 A PROSPECTIVE JUROR: Excuse me?

8 THE COURT: Portsmouth?

9 A PROSPECTIVE JUROR: Camp Smith.

10 THE COURT: Camp Smith?

11 A PROSPECTIVE JUROR: Yes.

12 THE COURT: How long did you do that?

13 A PROSPECTIVE JUROR: Almost three years.

14 THE COURT: You did it three years.

15 A PROSPECTIVE JUROR: 35 months.

16 THE COURT: I see.

17 Is there any reason why you didn't serve longer?

18 A PROSPECTIVE JUROR: I had to take care of my
19 parents. They are both deceased.

20 THE COURT: You indicated that you've been a juror
21 in a State criminal trial involving a gun, is that right?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: And I don't want to know what the
24 verdict was but did you deliberate to a verdict?

25 A PROSPECTIVE JUROR: Yes.

Juror 308

1 THE COURT: You indicated that you have followed a
2 number of killings of students.

3 You said you were following the Pace University
4 killing of a student.

5 That is a recent killing?

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: And the Sean Bell killing?

8 A PROSPECTIVE JUROR: Yes.

9 THE COURT: And you said -- you were asked: What
10 opinions or feelings do you have regarding those trials and
11 the outcomes of those trials, and you said the police officer
12 overacted in both cases?

13 A PROSPECTIVE JUROR: In my opinion.

14 THE COURT: Do you think that the police tend to
15 overact as you call it in cases involving minorities
16 generally?

17 A PROSPECTIVE JUROR: Only because of job pressure.
18 And because the fact they don't really understand the
19 different cultures, they may have a tendency to overact.

20 THE COURT: There are going to be law enforcement
21 witnesses in this case.

22 Do you think your concerns regarding overacting by
23 law enforcement would have any effect on your ability to be
24 fair and impartial in considering the testimony of law
25 enforcement witnesses?

1 Juror 308

1 A PROSPECTIVE JUROR: No, your Honor.

2 THE COURT: You were asked if you had any opinions
3 or beliefs concerning law enforcement in general that would
4 make it difficult for you to evaluate evidence fairly and
5 impartially in accordance with the Court's instructions? You
6 checked yes and you explained: Most are doing a wonderful job
7 but there are many bad apples in services.

8 What did you mean by that?

9 A PROSPECTIVE JUROR: Well, I don't want to
10 stereotype one particular officer but sometimes because of the
11 job, you know --

12 Can you repeat the question?

13 THE COURT: You indicated with regard to law
14 enforcement officers your view that, that you have the view
15 that your beliefs about law enforcement officers in general
16 would make it difficult for you to evaluate the evidence
17 fairly and impartially in accordance with the Court's
18 instructions and you said most are doing a wonderful job but
19 there are many bad apples in services. So my question is:
20 What do you mean by that?

21 A PROSPECTIVE JUROR: Well, I guess over a period of
22 time when you do a job, sometimes when you get up in the
23 morning, you can do a job well and sometimes you can just take
24 a shortcut on the job and don't do it as well. Sometimes a
25 person needs to retire. Some people, they try to do a job for

Juror 308

1 20 years just to get a pension. Sometimes a person is not
2 just qualified to take that full duration.

3 THE COURT: So --

4 A PROSPECTIVE JUROR: In other words I was saying
5 sometimes a person is just burnt out.

6 THE COURT: I see.

7 Well, if there are law enforcement witnesses that
8 appear here, do you think that that perception that you have
9 whether it's valid or not valid, do you think your perception
10 would influence your consideration of the testimony of police
11 officers and FBI agents and other law enforcement people in
12 this trial?

13 A PROSPECTIVE JUROR: I'm not sure.

14 THE COURT: Anybody have another question?

15 MS. MERKL: Yes, your Honor.

16 THE COURT: All right.

17 (Whereupon, the following took place at sidebar.)

18 THE COURT: I didn't even get into the death penalty
19 questions yet but based on that answer I naught there might be
20 a problem that's why I asked.

21 MS. MERKL: Your Honor based on what we have heard
22 so far, the government doesn't see this as a problem. We
23 would just ask if he could evaluate, do his best to evaluate
24 the credibility of witnesses and put whatever perceptions he
25 may have as to law enforcement aside. If you probe into it a

Juror 308

1 little further, I think that might be helpful.

2 THE COURT: So let me go on and ask the rest of the
3 questions. Thank you.

4 (End of discussion at sidebar.)

5 THE COURT: Now following up on your last answer,
6 let me just ask this.

7 Do you believe that you could set aside your views
8 on some law enforcement officers' motives and behavior and
9 evaluate the credibility of witnesses in this case based on
10 what you observe from them on the witness stand?

11 A PROSPECTIVE JUROR: Yes, your Honor.

12 THE COURT: Let me go over with you your views on
13 the death penalty.

14 You said if anyone kills another for no good reason,
15 then that person should die. The eye for an eye rule should
16 be enforced. Do unto others as you have them do on to you.
17 Treat them the say way as I treat you.

18 Is that your philosophy?

19 A PROSPECTIVE JUROR: Yes, your Honor.

20 THE COURT: Well, in this case the defendant is
21 accused of three crimes in an indictment. They are the
22 intentional and deliberate murder of an individual, conspiracy
23 to commit the murder and a weapons charge in connection with
24 the other two charges.

25 Now, an indictment is only an accusation and the

Juror 308

1 defendant is presumed to be innocent under our system of law.
2 He doesn't have to prove he is innocent. The government
3 always has the responsibility, the obligation of proving to
4 the jury beyond a reasonable doubt that the defendant is
5 guilty of the crimes that are charged.

6 Do you understand that?

7 A PROSPECTIVE JUROR: Yes, your Honor.

8 THE COURT: And the defendant doesn't have to
9 provide any evidence, the defendant doesn't have to testify,
10 and I would tell the jury that they can't hold that against
11 the defendant in any way or take that into consideration in
12 any way when they deliberate.

13 Will you follow my instructions?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: Now, if after the government presents
16 its evidence and I give you the law that you must apply to the
17 evidence and you go back with your fellow jurors and
18 deliberate, if the jury returns a verdict of guilty for the
19 intentional and deliberate murder of an individual, then and
20 only then will the jury be required to consider what the
21 penalty should be. The normal penalty for that crime is life
22 in jail without the possibility of release. That is the
23 normal penalty.

24 However, in this case the government is seeking a
25 more significant, more serious penalty which is the death

Juror 308

1 penalty which they have the right to seek in these
2 circumstances. And they will present to the jury certain what
3 are called aggravating factors, evidence about the behavior
4 and background and record and circumstances of the defendant
5 that they think will convince the jury beyond a reasonable
6 doubt that the defendant should not receive the regular
7 penalty of life but should receive the more serious penalty of
8 death and the jury will have the opportunity to hear all this
9 evidence.

10 And also if the defense wishes to present evidence
11 about what we call mitigating factors, evidence that the
12 defense will say justifies the penalty of life in prison as
13 opposed to the death penalty, then the jury will have an
14 opportunity to consider all that evidence, the aggravating
15 factors, the mitigating factors to the extent it believes they
16 are relevant and decide what the penalty should be. That is
17 the second part of the trial.

18 So we have the guilt part of the trial and if the
19 defendant is found guilty of intentional and deliberate
20 murder, we then have the penalty part of the trial.

21 Do you understand that?

22 A PROSPECTIVE JUROR: Yes, your Honor.

23 THE COURT: Now, the jury in the penalty part of the
24 trial is never required to impose the death penalty. All 12
25 jurors must agree to impose the death penalty in order for the

Juror 308

1 death penalty to be imposed. If even one juror decides that
2 the penalty should be life, then the penalty will be life.
3 Every juror has to make his or her own moral decision as to
4 what the penalty should be and before doing that each juror
5 should listen to the views of the other jurors but it's each
6 juror's job to make an independent determination.

7 Do you think that you can make an independent
8 determination of what the penalty should be in that situation?

9 A PROSPECTIVE JUROR: Yes, your Honor.

10 THE COURT: Now, in a case of someone convicted of
11 an intentional murder, a deliberate and intentional murder of
12 an individual, would you consider imposing the death penalty
13 in that situation?

14 A PROSPECTIVE JUROR: Yes, your Honor.

15 THE COURT: Would you consider imposing a life
16 sentence in that situation?

17 A PROSPECTIVE JUROR: I'm not sure.

18 THE COURT: Why not?

19 A PROSPECTIVE JUROR: I don't think, if they take a
20 life, I don't know, an eye for an eye, a tooth for a tooth.
21 If you kill somebody, maybe you should have taken off this
22 earth.

23 THE COURT: So --

24 A PROSPECTIVE JUROR: Let me just interject this,
25 that is my opinion. I don't want to be the one that throws

Juror 308

1 the switch. I can make that opinion but I don't want to take
2 somebody's life in the process of doing it which I would be
3 doing. In other words, I wouldn't want to push that button.

4 THE COURT: So on the one hand, you believe that the
5 death penalty should always be imposed on someone who murders
6 another person?

7 A PROSPECTIVE JUROR: Yes.

8 THE COURT: On the other hand, you don't believe you
9 could vote for the death penalty if you are the 12th vote?

10 A PROSPECTIVE JUROR: I was never put in that
11 position before, so I'm not sure how I would react to it.
12 It's almost like if you have a gun and you are going to shoot
13 somebody, you don't know if you can do it until you are
14 actually confronted with it.

15 THE COURT: I appreciate your sharing your thoughts
16 with us and your concerns. You are very thoughtful and we
17 appreciate hearing from you on these very, very important
18 matters. We don't have any other questions. Mr. Recoppa will
19 tell you what to do next.

20 Have a good afternoon, sir.

21 A PROSPECTIVE JUROR: Thank you, your Honor.

22 THE COURT: You are most welcome.

23 (Whereupon, a prospective juror exits the
24 courtroom.)

25 MR. JASPER: Move to strike your Honor the juror is

Juror 308

1 substantially impaired.

2 MS. MERKL: We consent.

3 THE COURT: Juror 308 is substantially impaired and
4 he is struck on consent of the parties.

5 311 is next.

6 MS. MERKL: Your Honor, this is, this juror I think
7 requires extra special attention on issues not relating to the
8 death penalty.

9 As indicated in our letter, the juror indicated
10 numerous points in his questionnaire that he had formed an
11 opinion about the case and the defendant and he noted in his
12 questionnaire that he reads Gangland News and he knew somebody
13 who was recently arrested in the LCN sweep that was conducted
14 by multiple officers in January. So this juror seems like he
15 may have a lot of knowledge that is not necessarily going to
16 be in evidence.

17 THE COURT: I'll ask him.

18 Why don't we start with that.

19 MR. GOLTZER: Would your Honor also ask him if he
20 shared that knowledge with anybody else?

21 (Whereupon, a prospective juror entered the
22 courtroom.)

23 THE COURT: Good afternoon, sir.

24 A PROSPECTIVE JUROR: Good afternoon.

25 THE COURT: You are juror number 311?

Juror 311

1 A PROSPECTIVE JUROR: Yes.

2 THE COURT: I remind you that you are still under
3 oath.

4 And let me just ask you between the time you filled
5 out the questionnaire and today, have you read or learned or
6 heard or been told anything about this case?

7 A PROSPECTIVE JUROR: I read something in the paper
8 referring to it but I can't remember what.

9 THE COURT: Now, without telling me who you work
10 for, what kind of work do you do?

11 A PROSPECTIVE JUROR: Construction.

12 THE COURT: Construction.

13 Are you currently employed?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: Are you working for -- without telling
16 me who you are working for -- a company or a government
17 agency?

18 A PROSPECTIVE JUROR: Government agency.

19 THE COURT: How long have you been working for a
20 government agency?

21 A PROSPECTIVE JUROR: 12 years.

22 THE COURT: Now, you indicated that you live in
23 Ozone Park?

24 A PROSPECTIVE JUROR: Yes.

25 THE COURT: How long have you lived there?

Juror 311

1 A PROSPECTIVE JUROR: Since '82, '83.

2 THE COURT: Did you grow up there?

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: In connection with growing up there, did
5 you have any contact with any persons who had -- who are
6 reputed to have a relationship with organized crime?

7 A PROSPECTIVE JUROR: As I was growing up?

8 THE COURT: Yes.

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: Who?

11 A PROSPECTIVE JUROR: Well, one of those clubs was
12 right down the block from my house.

13 THE COURT: There was a social club?

14 A PROSPECTIVE JUROR: Yes, there was a social club.

15 THE COURT: Did you know anyone who went to the
16 social club?

17 A PROSPECTIVE JUROR: Yes.

18 THE COURT: Were they neighbors of yours?

19 A PROSPECTIVE JUROR: Not neighbors but they lived
20 in the neighborhood.

21 THE COURT: And were you aware or did you think that
22 they were engaged in organized crime or associated with
23 organized crime?

24 A PROSPECTIVE JUROR: Yes.

25 THE COURT: Which one, both or one, one or the

Juror 311

1 other?

2 A PROSPECTIVE JUROR: I'm sure they were associated,
3 either one.

4 THE COURT: I see.

5 Now, are you familiar with Gangland News?

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: Do you read it?

8 A PROSPECTIVE JUROR: Not lately but I have before.

9 THE COURT: Why don't you read it these days?

10 A PROSPECTIVE JUROR: I don't buy the Daily News
11 anymore. I think that it's associated with the Daily News.
12 I'm more into the New York Times now.

13 THE COURT: So have you read any stories over time
14 in the Daily News and Gangland about this defendant?

15 A PROSPECTIVE JUROR: Yes.

16 THE COURT: So what have you read about this
17 defendant?

18 A PROSPECTIVE JUROR: I read that he is associated
19 with, allegedly associated with a few murders in Brooklyn and
20 I think they gave the guy's name. It was a story, something
21 like that.

22 THE COURT: Anything else that you can recall about
23 that?

24 A PROSPECTIVE JUROR: I think there is imprisonment
25 and -- there were just bits and pieces here and there, a few

Juror 311

1 months in between there was always a story thrown in there.

2 THE COURT: Did you share any of that information
3 with anybody else associated with the case, in other words,
4 with other potential jurors?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Does anyone have any other questions?

7 MS. MERKL: No, your Honor.

8 MR. JASPER: No questions, judge.

9 THE COURT: I want to thank you for coming in. You
10 have a nice day.

11 A PROSPECTIVE JUROR: You too.

12 THE COURT: Mr. Reccoppa will tell you what to do
13 next.

14 (Whereupon, a prospective juror exits the
15 courtroom.)

16 MS. MERKL: Your Honor, based on the in-court voir
17 dire and the juror's questionnaire, the government would move
18 to have this jury excused for cause.

19 He indicated potential bias and lack of ability to
20 be fair and impartial multiple times in his questionnaire.
21 For the record, I would point to question 35, 39 B, question
22 51 B where he indicated that he had formed an opinion
23 regarding the defendant, question 52 D where he indicated he
24 had formed an opinion regarding this case, question 53 where
25 he indicated that it would be difficult to be fair and

Juror 311

1 impartial.

2 And although the juror apparently hasn't read
3 Gangland News recently, he does seem to have some beliefs,
4 true or not, that he learned from the media and we think he
5 has a potential severe bias or lack of impartiality with
6 regard to the case.

7 MR. JASPER: Based on his honest candor in
8 answering, we consent to the excusal.

9 THE COURT: Motion is granted.

10 Juror number 311 is substantially impaired and is
11 stricken.

12 312 is coming in on Monday. 313 is next.

13 (Whereupon, a prospective juror entered the
14 courtroom.)

15 THE COURT: Please be seated, ma'am.

16 Good afternoon, you are juror number 313?

17 A PROSPECTIVE JUROR: Yes.

18 THE COURT: I remind you that you are still under
19 oath.

20 And let me ask you between the time you filled out
21 your questionnaire and today, have you read or heard or been
22 informed of anything about the case?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: Now, you indicated for the last six
25 months you've worked in a movie theater, is that correct?

Juror 313

1 A PROSPECTIVE JUROR: That's right.

2 THE COURT: What job do you have in a movie theater?

3 A PROSPECTIVE JUROR: Manager of the box office?

4 THE COURT: Before that, what kind of work did you
5 do?

6 A PROSPECTIVE JUROR: I worked in Chase Bank.

7 THE COURT: How long were you at Chase?

8 A PROSPECTIVE JUROR: Actually I was working for
9 Washington Mutual and Chase. So I've been in banking for like
10 20 years.

11 THE COURT: And they consolidated and some jobs were
12 lost, is that it?

13 A PROSPECTIVE JUROR: No, actually I quit myself.

14 THE COURT: And you served on a trial jury in a
15 civil case is that right?

16 A PROSPECTIVE JUROR: Yes.

17 THE COURT: And did you, without telling me what the
18 verdict was, did you deliberate to a verdict?

19 A PROSPECTIVE JUROR: Yes, we did.

20 THE COURT: Now, do you know what your employer's
21 policy is on paying for jury duty?

22 A PROSPECTIVE JUROR: I got paid from my job here.

23 THE COURT: You get paid?

24 A PROSPECTIVE JUROR: I do. I have to bring back
25 the check to the company if I get paid here.

Juror 313

1 THE COURT: Do you know whether they will pay you
2 for the entire trial?

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: You indicated that your mother had been
5 robbed?

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: What were the circumstances of that?

8 A PROSPECTIVE JUROR: She was robbed outside our
9 house and we did catch that person.

10 THE COURT: Really?

11 A PROSPECTIVE JUROR: Yes.

12 THE COURT: I would like to ask you a few questions
13 about your views on the death penalty.

14 You said I have nothing against the death penalty.
15 They should have the same result as the victim if they kill
16 someone.

17 Is that your view about the death penalty?

18 A PROSPECTIVE JUROR: Yes, that's right.

19 THE COURT: And do you believe that the death
20 penalty should be imposed for anyone who commits an
21 intentional and deliberate murder?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: Are there any exceptions?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: Anything else?

Juror 313

1 MR. JASPER: No questions, judge.

2 MS. MERKL: No, your Honor.

3 THE COURT: Thank you very much for coming in.

4 You have a nice day.

5 Mr. Reccoppa will tell you what to do next.

6 A PROSPECTIVE JUROR: Thank you.

7 (Whereupon, a prospective juror exits the
8 courtroom.)

9 MR. JASPER: Move to --

10 THE COURT: Do you have a motion?

11 MR. JASPER: Yes, your Honor, move to strike for
12 cause, judge.

13 MS. MERKL: No objection.

14 THE COURT: All right, juror number 313 is struck
15 for cause. She is substantially impaired because she is not
16 life qualified.

17 314.

18 (Whereupon, a prospective juror entered the
19 courtroom.)

20 THE COURT: Good afternoon.

21 Please be seated, ma'am, welcome.

22 You are juror number 314, is that right?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: And I remind you that you are still
25 under oath.

Juror 313

1 Let me ask you between the time you filled out this
2 questionnaire and today, have you learned, heard, read, been
3 advised of anything about this case?

4 A PROSPECTIVE JUROR: No.

5 THE COURT: Now, you missed a question and I'll ask
6 you the question.

7 A PROSPECTIVE JUROR: Okay.

8 THE COURT: Do you have any unusual financial
9 hardship or other serious problem that would prevent you from
10 serving as a juror in this case?

11 A PROSPECTIVE JUROR: No, but I have a mortgage to
12 pay.

13 THE COURT: Tell me what the problem would be. You
14 said you are a civil service benefit examiner, is that right?

15 A PROSPECTIVE JUROR: Yes.

16 THE COURT: And without telling me who you work for,
17 do you work for a government agency?

18 A PROSPECTIVE JUROR: Yes, I work for the City of
19 New York.

20 THE COURT: The City of New York pays you during
21 your jury duty, doesn't it?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: So you'll be able to pay your mortgage
24 because you are going to get paid for your job while you are a
25 juror, correct?

Juror 313

1 A PROSPECTIVE JUROR: Yes.

2 THE COURT: Is there some other reason why you said
3 I have a mortgage to pay?

4 A PROSPECTIVE JUROR: Because I'm behind like a
5 month or two.

6 THE COURT: There is a question here: As a result
7 of your exposure to the media, is there any reason why you can
8 not be fair and impartial in this case?

9 A PROSPECTIVE JUROR: I think I am because if
10 anybody is killed, as you told us before, I believe the
11 judgment has to be served. So I don't believe in prolonging
12 anything if they find somebody killed somebody.

13 THE COURT: Do you have any concerns about the Mafia
14 that would make it hard for you to be a fair and impartial
15 juror?

16 A PROSPECTIVE JUROR: I don't think I have anything
17 I can say about Mafia, I think if somebody killed somebody.

18 THE COURT: Then what?

19 A PROSPECTIVE JUROR: They should kill that person
20 or give the --

21 THE COURT: You said give some kind of judgment?

22 A PROSPECTIVE JUROR: Like the punishment, you know,
23 severe punishment.

24 THE COURT: If someone is convicted of intentionally
25 and deliberately committing murder, what do you think the

Juror 313

1 punishment should be?

2 A PROSPECTIVE JUROR: Anything severe.

3 THE COURT: Anything severe?

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: Let me ask you; one of the options in
6 this case if the defendant is found guilty of intentional and
7 deliberate murder is that the defendant may be sentenced to
8 life in jail without the possibility of parole or release.

9 Is that a severe punishment in your mind?

10 A PROSPECTIVE JUROR: I just don't know, I can't.

11 THE COURT: You can't what?

12 A PROSPECTIVE JUROR: It depends on what the judge
13 wants to do.

14 THE COURT: The judge doesn't have anything to do
15 with it. It's up to the jury.

16 MR. GOLTZER: May we have a sidebar.

17 THE COURT: Do you want a sidebar?

18 No questions.

19 MR. GOLTZER: No questions.

20 THE COURT: Do you least admire your pastor?

21 A PROSPECTIVE JUROR: What?

22 THE COURT: It says other than friends and
23 relatives, please list the three people you least admire, and
24 you wrote down: My pastor.

25 Do you not like your pastor?

Juror 313

1 A PROSPECTIVE JUROR: I love my pastor. I like my
2 pastor.

3 THE COURT: Thank you very much for coming in.

4 Mr. Reccoppa will tell you what to do next.

5 You have a nice day.

6 A PROSPECTIVE JUROR: Thank you.

7 THE COURT: You are most welcome.

8 (Whereupon, a prospective juror exits the
9 courtroom.)

10 THE COURT: Can I make an observation?

11 MS. MERKL: Yes, your Honor.

12 THE COURT: This juror is totally confused.

13 MR. GOLTZER: We agree.

14 MS. MERKL: We agree.

15 THE COURT: And would not be able to follow the
16 evidence or the law in this case and is substantially
17 impaired.

18 Do you agree?

19 MS. MERKL: We agree.

20 THE COURT: Do you agree?

21 MR. GOLTZER: I do.

22 And our wonderful jury expert happened to notice,
23 Ms. Bochnak noticed that she was literally hiding her face
24 from the defense table.

25 MS. MERKL: And from the government.

Juror 313

1 THE COURT: Juror 314 is struck for cause on consent
2 of the parties.

3 319.

4 (Whereupon, a prospective juror entered the
5 courtroom.)

6 THE COURT: Please be seated.

7 You are juror number 319, is that right?

8 A PROSPECTIVE JUROR: Yes.

9 THE COURT: And I remind you that you are still
10 under oath.

11 And let me ask you since you filled out this
12 questionnaire until today, have you read or learned or been
13 advised of anything about this case?

14 A PROSPECTIVE JUROR: No.

15 THE COURT: Okay.

16 You are unemployed?

17 A PROSPECTIVE JUROR: Yes.

18 THE COURT: Have you -- how long have you been
19 unemployed?

20 A PROSPECTIVE JUROR: Since August of last year.

21 THE COURT: Since August?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: So what kind of job did you have when
24 you were employed?

25 A PROSPECTIVE JUROR: I was an administrative

Juror 319

1 assistant for a fashion company.

2 THE COURT: And you were laid off?

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: How long did you do that job?

5 A PROSPECTIVE JUROR: Like four months.

6 THE COURT: Before that?

7 A PROSPECTIVE JUROR: I was in school.

8 THE COURT: It's hard to find a job these days?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: Let me ask you some questions about your
11 views on the death penalty.

12 You said that I don't feel like anyone should be put
13 to death unless that person has killed a substantial amount of
14 people, killing one person is a crime but time can be served
15 and the person can live their life. Killing multiple people
16 shows that you knew what you were going and don't care. And
17 by multiple, I mean hundreds.

18 Is that your view about the death penalty?

19 A PROSPECTIVE JUROR: Yes.

20 THE COURT: Is there a minimum number that would be
21 necessary for you to impose the death penalty, minimum number
22 of murders?

23 Do you have a number in mind?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: If someone -- if there is evidence that

Juror 319

1 someone has committed several murders, separate from each
2 other over time, would that be sufficient for you to impose
3 the death penalty?

4 A PROSPECTIVE JUROR: No.

5 THE COURT: How long have you held these views?

6 A PROSPECTIVE JUROR: I was in high school.

7 THE COURT: Is there any type of mass murder that
8 you would be particularly inclined to impose the death penalty
9 for?

10 A PROSPECTIVE JUROR: Probably like -- I don't know
11 the name of it, what happened in Africa. The genocide.

12 THE COURT: So for genocide you would impose the
13 death penalty?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: Are there other questions?

16 MR. GOLTZER: No, your Honor.

17 MS. MERKL: No, your Honor.

18 THE COURT: Thank you very much for coming in.

19 Mr. Reccoppa will tell you what to do next.

20 (Whereupon, a prospective juror exits the
21 courtroom.)

22 MS. MERKL: Your Honor, the government would move to
23 excuse Juror 319 for cause based on her substantial impairment
24 with regard to death penalty.

25 MR. GOLTZER: Consent.

Juror 319

1 THE COURT: Number 319 is struck. The motion is
2 granted. She is substantially impaired in that she is not
3 death qualified.

4 Next one, 321.

5 The last one.

6 MR. GOLTZER: Question 72, your Honor.

7 THE COURT: Okay.

8 MR. GOLTZER: I read that as a problem, the
9 defendant not testifying.

10 (Whereupon, a prospective juror entered the
11 courtroom.)

12 THE COURT: Please be seated, sir.

13 Good afternoon.

14 A PROSPECTIVE JUROR: Good afternoon.

15 THE COURT: Welcome.

16 You are juror number 321?

17 A PROSPECTIVE JUROR: That's correct, sir.

18 THE COURT: Very well.

19 And I remind you that you are still under oath.

20 Let me ask you between the time you filled out the
21 questionnaire and today, did you learn, read, hear or were you
22 told anything about the case?

23 A PROSPECTIVE JUROR: I'll be honest with you, sir,
24 a few people that told me about a few things that were in the
25 paper.

Juror 319

1 THE COURT: What did they tell you?

2 A PROSPECTIVE JUROR: Well, I have a brother-in-law
3 who is retired from the job.

4 THE COURT: What kind of job?

5 A PROSPECTIVE JUROR: The police department. My
6 last brother-in-law just retired a couple of weeks ago from
7 homicide detective in the South Bronx, in the Bronx and he is
8 actually from Throgs Neck section. And he told me there was a
9 thing in the paper, he is familiar with Mr. Basciano and there
10 was things in the paper about the paper clips or the ties,
11 stuff like that.

12 THE COURT: Did anyone mention anything else about
13 Mr. Basciano to you?

14 A PROSPECTIVE JUROR: No.

15 THE COURT: Are there any other questions?

16 MR. GOLTZER: No.

17 MS. MERKL: No, your Honor.

18 THE COURT: Thank you for being so candid.

19 Mr. Reccoppa will tell you what to do next.

20 You have a nice day, sir.

21 A PROSPECTIVE JUROR: Thank you.

22 THE COURT: You are most welcome.

23 (Whereupon, a prospective juror exits the
24 courtroom.)

25 THE COURT: Well that was the first mention of the

Juror 319

1 Throgs Neck section of the Bronx.

2 MS. MERKL: And his brother-in-law is a homicide
3 detective there.

4 I was expecting a whole story about his involvement
5 in certain investigations.

6 MR. GOLTZER: I want to thank your Honor for asking
7 him what the job was.

8 THE COURT: I've heard that term of art used but I
9 wanted to make sure he and I shared the same definition of the
10 job.

11 There is a motion.

12 MR. GOLTZER: We move to strike him for cause based
13 upon his exposure to extra information and his closeness to a
14 homicide detective who gave it to him.

15 MS. MERKL: We consent under the circumstances.

16 THE COURT: Number 321 is struck. He was
17 substantially impaired for the reasons set forth by the
18 parties on consent.

19 On Monday we have 21. I think that it would be
20 important for the parties to expedite their consideration of
21 the additional questionnaires that have been filled out
22 because at the end of Monday, we'll be up to 363 and we're not
23 having very much luck lately with these interviews even though
24 the parties have already struck on consent more than half of
25 the first 600.

Juror 319

1 And we also have the Tuesday interviewees which go
2 up to 401. So we'll be done with two-thirds, about two-thirds
3 of the first group.

4 Once we're into midweek, we're going to have to
5 decide whether we want to bring in more potential jurors and
6 we'll take a look at what the numbers are, you can do the same
7 thing, we all have the same information.

8 I'm just concerned that we may run out of potential
9 jurors before we are up -- before we are at or beyond the
10 magic number which I would say is at least 76.

11 MR. GOLTZER: We're not even halfway there.

12 THE COURT: That's right. We are not even halfway
13 there and I am very concerned about it but I think that we can
14 expedite it. That way it puts a lot of burden on you all but
15 we still have to do it so that we can move into the trial
16 phase of this case.

17 I have a few things.

18 Do you have something?

19 You are standing.

20 MS. MERKL: No.

21 THE COURT: Please be seated.

22 The defendant has moved to strike juror 289 for
23 cause on the ground that her reported concern for her privacy
24 substantially impairs her ability to serve as a juror.

25 The Court does not believe that this juror is in any

1 way impaired in her ability to serve as a juror in this case.

2 The Court notes that unlike some other jurors who
3 have affirmatively raised the issue of safety concerns to the
4 Court during voir dire, juror 289 never mentioned the issue
5 during extensive voir dire.

6 During her entire questioning, she was thoughtful
7 and direct and in no way did she demonstrate that safety
8 concerns would enter into her service as a juror.

9 The issue was only raised upon request of defense
10 counsel. When asked what this juror meant in questionnaire
11 question 122, when she stated quote "Just my privacy as a
12 juror," end quote, this juror mentioned that she was concerned
13 that with press exposure, her identity may become known.

14 The Court agrees with defense counsel that juror 289
15 seemed skeptical as first as to whether the Court would take
16 sufficient steps for maintain her anonymity, however, after
17 the Court advised her that sufficient steps would be taken,
18 this juror appeared less concerned.

19 Moreover, while this juror stated concern with her
20 anonymity, she in no way indicated that this concern would
21 affect her service as a juror.

22 The Court also takes note that this jury is not yet
23 aware of all the steps that the Court and the Marshals Service
24 will take to protect her anonymity, such as partial
25 sequestration. These steps are likely to mitigate any concern

1 she has with anonymity.

2 The Court also notes that in the very question and
3 answer in which the juror raised the issue of anonymity, she
4 answered quote "no," end quote when asked quote: "Is there
5 anything about the nature of the charges or the facts of the
6 case as they have been explained to you thus far that would
7 affect your ability to be a fair and impartial juror in this
8 case," end quote.

9 Consequently, the Court finds that there is no basis
10 to conclude that juror 289 is substantially impaired.

11 The motion to strike is denied.

12 On another issue, I would like to share with you the
13 Court's analysis and decision.

14 Defense counsel has requested that the court ask
15 about combinations of potential aggravating factors rather
16 than asking about potential aggravating factors individually.

17 The court has already ruled on this motion in its
18 opinion of February 4, 2011. That previous order held as
19 follows. "Part of the guarantee of a defendant's right to an
20 impartial jury is an adequate voir dire to identify
21 unqualified jurors." Morgan v. Illinois, 504 U.S. 719, 729
22 (1992).

23 The proper standard for determining when a
24 prospective juror may be excluded for cause because of his or
25 her views on capital punishment is whether the juror's views

1 would prevent or substantially impair the performance of his
2 duties as a juror in accordance with his instructions and his
3 oath." Morgan v Illinois at 728 citing Wainwright v. Witt,
4 469 U.S. 412, 424 (1985)

5 In Morgan, the Supreme Court held that a defendant
6 charged with a capital crime must have the ability to
7 challenge a potential juror for cause if he would
8 automatically vote to impose the death penalty if the
9 defendant were convicted. 504 U.S. at 729.

10 As the Morgan Court reasoned, a juror who will
11 automatically vote for the death penalty in every case will
12 fail in good faith to consider the evidence of aggravating and
13 mitigating circumstances as the instructions require him to
14 do.

15 Indeed, because such a juror has already formed an
16 opinion on the merits, the presence or absence of either
17 aggravating or mitigating circumstances is entirely irrelevant
18 to such a juror.

19 Quoting Morgan v Illinois, defendants must be
20 permitted to ask potential jurors questions that will
21 effectively reveal any such biases. As this court has
22 previously held, "certain case-specific questions can be
23 appropriate in capital voir dire.

24 Such questions may be proper, indeed necessary, if
25 they deal with subject matter that would demonstrate

1 impermissible bias on the part of a juror." United States
2 v. Wilson, 493 F. Supp. 2d 402, 404-05 (E.D.N.Y. 2006) (citing
3 United States v. Fell, 372 F. Supp. 2d 766, 770 (D. Vt.
4 2005)).

5 As the Fell court held, "if properly formed,
6 case-specific questions help identify various forms of juror
7 bias. For example, a juror might be excused for cause if he
8 or she could not fairly consider the death penalty where the
9 victim was involved in drug crimes." 372 F. Supp. 2d at 771;
10 see also United States v. Johnson, 366 F. Supp. 2d 822,
11 848-49 (N.D. Iowa 2005).

12 Accordingly, the court will permit Basciano to
13 include case-specific questions in the jury questionnaire so
14 long as they are phrased so as to serve a legitimate purpose;
15 see Johnson, 366 F. Supp. 2d at 849.

16 While the court will permit Basciano to include
17 case-specific questions in the jury questionnaire, the court
18 will only permit such inclusion if the questions are
19 reformulated so as to best serve the purpose of revealing
20 juror bias.

21 Basciano's proposed questions ask proposed jurors to
22 consider whether a combination of likely aggravating factors
23 together will cause the juror to be unable to consider life in
24 prison.

25 A question combining aggravators together does not

1 effectively reveal juror bias and instead requires potential
2 jurors to prejudge and reveal how they will weigh the evidence
3 at the penalty phase.

4 In accordance with this ruling, the court included
5 individual potential aggravators in the questionnaire and has
6 repeatedly asked about them during in-court voir dire.
7 Despite this court's previous ruling on the issue, and defense
8 counsels' repeated representation that they were satisfied
9 with asking potential aggravating factors individually,
10 defense counsel has now changed its mind. The court has not.
11 Contrary to the Defendant's suggestion of yesterday, no
12 plausible reading of the constitution, the case law, or United
13 States v. Johnson, 366 F. Supp. 2d 822 (N.D. Iowa 2005) and
14 United States v. Fell, 372 F. Supp. 2d 766 (D. Vt. 2005),
15 compels the conclusion that constitutionally-effective voir
16 dire requires asking about potential aggravating factors in
17 combination.

18 The court previously noted that there is little
19 authority for the proposition that due process requires the
20 court to ask about the effect that specific potential
21 aggravating factors would have on a juror's deliberation at
22 the penalty phase.

23 The court nonetheless, found that the Defendant
24 could more fully route out circumstances in which the jurors
25 would be unable to follow the court's instructions and

1 consider and weigh all mitigating and aggravating factors by
2 asking the jurors whether potentially inflammatory aggravating
3 factors such as the conspiracy to kill a federal prosecutor
4 would cause them to disregard mitigating factors and
5 automatically vote for the death penalty. However, just
6 because the court afforded Defendant this already generous
7 right does not mean the court must open the door entirely to
8 an all-out testing of how jurors will weigh aggravating
9 factors in combination.

10 While the court found it reasonable that some jurors
11 could conceivably have a bias toward some particular
12 aggravating factor such that the presence of that factor would
13 cause a juror to violate their oath to follow the law that
14 demands weighing all mitigating and aggravating factors, the
15 court finds a far less serious concern that a juror could hear
16 a particular combination and have a prejudice to that
17 combination such that they could not consider mitigating
18 evidence.

19 Rather, asking a juror how they would react to a
20 combination of aggravating factors is asking those jurors to
21 weigh the aggravators in the absence of any other facts and
22 prejudge the case. Of course the court could phrase the
23 question as "could you still consider mitigating factors," but
24 this would tell little about juror's actual bias, and would
25 rather just test their ability to participate in an abstract

1 and highly speculative thought experiment.

2 The court also deems it inappropriate to ask
3 combinations of aggravators along with combinations of
4 mitigators, which have been submitted to the court by the
5 Defendant.

6 While this would reduce the problem of aggravators
7 being considered in a vacuum, it would only compound the
8 problem of asking jurors to prejudge the case by weighing
9 mitigators and aggravators in advance staking out their
10 positions.

11 If the constitution required inquiry into the effect
12 of combined aggravators in this case, the court sees no
13 principled basis upon which to distinguish this case from
14 every other federal death penalty case in which the government
15 planned to present multiple aggravators.

16 In other cases, as in this one, the argument could
17 be made that if hearing a particular set of aggravators would
18 cause a potential juror to say that they could not consider
19 mitigating evidence, then these jurors would be substantially
20 impaired. However, the law on capital voir dire does not
21 support such a broad reading of the constitution and this
22 court sees no justification broaden it so drastically.

23 The court's position is clear, Defense counsel's
24 objection has been made and is reserved, and it need not be
25 raised again.

1 Is there else for today?

2 MS. MERKL: No, your Honor.

3 THE COURT: Anything else for today?

4 MR. GOLTZER: Very briefly, I want TO alert the
5 Court if I may to an issue that may arise Monday or Tuesday.

6 We have submitted a letter to the government which
7 was ECFed requesting an unredacted roster for 11 South at the
8 MCC for the period that Mr. Basciano was there and during the
9 period that the issue of the list, the so-called list arose.

10 The government has not yet responded to the letter.

11 MS. MERKL: That is not accurate.

12 THE COURT: Just let him finish.

13 MR. GOLTZER: I haven't received the response.

14 THE COURT: Please finish, Mr. Goltzer.

15 MR. GOLTZER: I have not seen or received the
16 response to my letter. It's on ECF I'll read it. If there is
17 a need for further action, I'll take it. If not, I won't.

18 I am now advised for the first time it's on there.

19 MS. MERKL: The government requested that the
20 defense provide the Bates numbers for the discovery materials
21 that they are referring to in our letter that was filed a
22 couple of days ago filed by Ms. Argentieri.

23 We are not sure which documents they are looking
24 for. There are over 10,000 pages of discovery materials. If
25 we have an unredacted list and it is appropriate for

1 disclosure under Rule 16, we will provide it.

2 If we do not have such a list, the defense will have
3 to subpoena it from the Bureau of Prisons, your Honor.

4 MR. GOLTZER: We will act accordingly.

5 THE COURT: On Monday, we'll start add 9:30.

6 Have a good weekend, everybody.

7 (Whereupon, the trial was adjourned to Monday,
8 March 21, 2011 at 9:30 a.m.)

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